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## Letter dated 17 October 2006 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to Security Council resolution 1690 (2006), in which the Council welcomed my initiative to ask the United Nations High Commissioner for Human Rights to take the lead in establishing an independent special inquiry commission in response to the request made by the Government of Timor-Leste in its letter dated 8 June 2006 (S/2006/391), and requested me to keep the Council informed on this matter. In its resolution 1704 (2006), the Council welcomed the establishment and initiation of the tasks of the Independent Special Commission of Inquiry for Timor-Leste, and looked forward to its report by 7 October 2006.

I have received from the High Commissioner the report of the Independent Special Commission of Inquiry for Timor-Leste, together with a transmittal letter dated 2 October 2006 from the Chair of the Commission (see annex).

I should be grateful if you would bring the report and the letter to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

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## Annex

### Letter dated 2 October 2006 from the Commissioner of the Independent Special Commission of Inquiry for Timor-Leste addressed to the United Nations High Commissioner for Human Rights

On behalf of the members of the members of the Independent Special Commission of Inquiry for Timor-Leste, I have the honour to transmit to you the report of the Commission, the establishment of which had been requested by the then Senior Minister and Minister for Foreign Affairs of Timor-Leste, Jose Ramos-Horta, on 8 June 2006.

In accordance with its terms of reference, the report establishes the facts and circumstances relevant to incidents on 28 and 29 April and 23 to 25 May and other related events or issues which contributed to the crisis; it clarifies responsibility for the events and recommends accountability measures.

(*Signed*) Paulo Sérgio **Pinheiro**
Commissioner (Chair)
Independent Special Commission of Inquiry for Timor-Leste

# Report of the Independent Special Commission of Inquiry for Timor-Leste

**Geneva, 2 October 2006**

*Summary*

The Independent Special Commission of Inquiry for Timor-Leste was established under the auspices of the United Nations High Commissioner for Human Rights following an invitation from the then Minister for Foreign Affairs of Timor-Leste to the Secretary-General to establish such a body. Its mandate was to establish the facts and circumstances relevant to incidents that took place on 28 and 29 April and 23, 24 and 25 May and related events or issues that contributed to the crisis, clarify responsibility for those events and recommend measures of accountability for crimes and serious violations of human rights allegedly committed during the mandated period.

The present report is based upon extensive interviews and analysis conducted by the Commission in Timor-Leste. In excess of 200 witnesses were interviewed and 2,000 documents were considered by the Commission. The Commission has been able to establish a detailed and accurate narrative of the events of April and May which resulted in significant loss of life, injury and widespread property damage.

Further to that narrative of events and circumstances, the Commission has established the responsibility of various actors and institutions. While recognizing that Timor-Leste is a fledgling democracy with developing institutions, it is the view of the Commission that the crisis which occurred in Timor-Leste can be explained largely by the frailty of State institutions and the weakness of the rule of law. Governance structures and existing chains of command broke down or were bypassed; roles and responsibilities became blurred; solutions were sought outside the existing legal framework. The Commission has examined exhaustively the responsibility of the relevant security institutions, organs of Government and international institutions and made findings as to the acts and omissions of these bodies which contributed materially to the events.

The mandate for clarifying responsibility for the events of April and May also includes establishing individual criminal responsibility. The Commission is neither a tribunal nor a prosecuting authority. It makes no conclusions about the guilt beyond reasonable doubt of specific persons. Rather, it identifies individuals reasonably suspected of participation in serious criminal activity and recommends that these people be prosecuted under the domestic law. Persons holding public office and senior appointments within the security sector are among such individuals identified. The Commission also identifies other persons with respect to whom further investigation by the competent authorities may lead to criminal prosecution.

In accordance with its mandate the Commission has made recommendations regarding measures of accountability to be accomplished through the national judicial system. This system must be reinforced considerably. It is vital to Timor-Leste that justice be done and seen to be done. A culture of impunity will threaten the foundations of the State. The Commission is of the view that justice, peace and democracy are mutually reinforcing imperatives. If peace and democracy are to be advanced, justice must be effective and visible. This will require a substantial and long-term effort on the part of the Government and its international partners.

## Abbreviations

| | |
|---|---|
| ASDT | Associação Social Democráta Timorense (Social Democratic Association of Timor-Leste) |
| CNRM | Conselho Nacional de Resistência Maubere (National Council of Maubere Resistance) |
| FALINTIL | Forças Armadas de Libertação Nacional de Timor-Leste (Armed Forces for the National Liberation of East Timor) |
| F-FDTL | FALINTIL-Forças Armadas de Defesa de Timor-Leste |
| FRETILIN | Frente Revolucionária do Timor-Leste Independente (Revolutionary Front for an Independent East Timor) |
| IDP | internally displaced persons |
| NGO | non-governmental organization |
| PD | Partido Democrático |
| PKF | United Nations peacekeeping force |
| PNTL | Polícia Nacional de Timor-Leste |
| PSD | Partido Social Democrático (Social Democratic Party) |
| UDT | União Democrática Timorense (Timorese Democratic Union) |
| UIR | Unidade Intervenção Rápida (Rapid Response Unit) |
| UNMIT | United Nations Integrated Mission in Timor-Leste |
| UNOTIL | United Nations Office in Timor-Leste |
| UNPOL | United Nations police |
| UNTAET | United Nations Transitional Administration in East Timor |
| UPF | Unidade Patrulhamento Fronteira (Border Patrol Unit) |
| URP | Unidade de Reserva da Polícia (Police Reserve Unit) |

## Chronology of significant events

| | |
|---|---|
| 9 January 2006 | Forças Armadas de Libertação National de Timor-Leste/FALINTIL-Força de Defesa de Timor-Leste (F-FDTL) soldiers submit a written petition to Brigadier General Taur Matan Ruak and President Gusmão. |
| 17 February 2006 | The petitioners abandon their barracks. |
| 16 March 2006 | The dismissal of 591 petitioners is announced. The effective date is 1 March 2006. |
| 23 March 2006 | The President makes a speech criticizing the decision to dismiss and referring to the "east versus west" issue. |
| 18 April 2006 | The petitioners submit a letter to the General Commander of the Polícia Nacional de Timor-Leste (PNTL), seeking permission to hold a peaceful demonstration from 24 to 28 April inclusive. |
| 24 April 2006 | The petitioners' demonstration begins in front of the Government Palace. |
| 28 April 2006 | Violence erupts outside the Government Palace on the last morning of the demonstration. Two civilians are killed, four persons suffer firearm injuries, two persons suffer other serious injuries.<br><br>More violence occurs at Comoro Market. One civilian is killed, eight persons suffer firearm injuries, four persons suffer other serious injuries.<br><br>At Raikotu/Taci Tolu violence occurs within the F-FDTL operational area. Two civilians are killed, five civilians suffer firearm injuries.<br><br>F-FDTL is deployed to assist PNTL to restore order and contain the petitioners. |
| 29 April 2006 | The decision is made to withdraw F-FDTL. |
| 1 May 2006 | Joint F-FDTL Military Police and PNTL operations commence. |
| 3 May 2006 | Major Alfredo Reinado abandons the F-FDTL Military Police taking with him other military police officers, PNTL officers and weapons. |
| 4 May 2006 | The withdrawal of F-FDTL is completed. |

| | |
|---|---|
| 8 May 2006 | Incident of violence in Gleno in which eastern PNTL officers are attacked. One officer killed, one officer seriously injured. Minister of the Interior Rogerio Lobato arms two groups of civilians — the Rai Los and Lima Lima groups — with weapons and ammunition belonging to the Border Patrol Unit (UPF) of PNTL. |
| 17-19 May 2006 | The Frente Revolucionária do Timor-Leste Independente (Revolutionary Front for an Independent East Timor) (FRETILIN) Party National Congress held in Dili. |
| 21 May 2006 | Minister of the Interior Lobato distributes additional UPF weapons to the Rai Los group. |
| 23 May 2006 | F-FDTL and PNTL officers are ambushed by Major Reinado and his group. Five persons are killed, 10 persons are seriously injured. |
| 24 May 2006 | Attack on F-FDTL soldiers in Taci Tolu/Tibar by the Rai Los group, petitioners, and PNTL. Five persons are killed, two persons are seriously injured. |
| | Attack on the house of Brigadier General Taur Matan Ruak. One person is killed, two persons are injured. |
| | F-FDTL arms civilians with the knowledge of Minister of Defence Rodrigues. |
| 25 May 2006 | The house of in-laws of Minister of the Interior Lobato is burnt. Six civilians trapped inside the house are killed. |
| | An armed confrontation between F-FDTL soldiers and PNTL officers centred on the PNTL headquarters is followed by the shooting of unarmed PNTL officers escorted under United Nations protection. Nine persons are killed, twenty-seven persons suffer serious gunshot injuries. |
| | A shooting occurs at Mercado Lama. One civilian is killed, two civilians are wounded. |
| 1 June 2006 | Minister of the Interior Lobato and Minister of Defence Rodrigues resign. |
| 25 June 2006 | Minister for Foreign Affairs Ramos-Horta resigns. |
| 26 June 2006 | Prime Minister Alkatiri resigns. |
| 10 July 2006 | José Ramos-Horta is sworn in as Prime Minister. |

# Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Introduction | 1–17 | 8 |
| | A. Establishment of the Commission | 1–3 | 8 |
| | B. Terms of reference | 4–5 | 8 |
| | C. Composition of the Commission | 6–7 | 9 |
| | D. Working methods | 8–14 | 10 |
| | E. The visits of the Commissioners to Timor-Leste | 15–16 | 11 |
| | F. Cooperation of civil and military authorities of Timor-Leste, other concerned Governments, the United Nations, non-governmental organizations and other representatives of civil society | 17 | 12 |
| II. | Background to the crisis of April and May 2006 | 18–36 | 12 |
| III. | The facts and circumstances relevant to the events of April and May 2006 | 37–101 | 17 |
| IV. | Responsibility | 102–173 | 33 |
| | A. Legal background | 102–108 | 33 |
| | B. Individual criminal responsibility | 109–134 | 35 |
| | C. Institutional responsibility | 135–173 | 40 |
| V. | Accountability measures | 174–220 | 50 |
| | A. Existing judicial mechanisms | 176–203 | 50 |
| | B. Augmenting international support | 204–211 | 55 |
| | C. Use of traditional justice/reconciliation processes | 212–213 | 56 |
| | D. Other measures of accountability | 214–220 | 56 |
| VI. | Conclusions and findings | 221–224 | 57 |
| | A. Conclusions | 221–223 | 57 |
| | B. Findings | 224 | 58 |
| VII. | Recommendations | 225–245 | 59 |
| | A. Individual criminal responsibility | 225–227 | 59 |
| | B. Accountability measures | 228–245 | 59 |

# I. Introduction

## A. Establishment of the Commission

1. On 8 June 2006, the Senior Minister and Minister for Foreign Affairs and Cooperation of Timor-Leste wrote to the Secretary-General of the United Nations inviting the United Nations to "establish an independent special inquiry commission" to "review the incidents on 28 and 29 April and on 23, 24 and 25 May, and other related events or issues which contributed to the crisis".

2. The Secretary-General responded favourably to the invitation. On 12 June 2006, he requested the United Nations High Commissioner for Human Rights to establish such a commission. His decision was communicated to the Security Council on 13 June 2006 (see S/PV.5457). On 20 June 2006, the Security Council, in resolution 1690 (2006), welcomed the initiative of the Secretary-General to ask the High Commissioner for Human Rights to establish an independent special commission of inquiry and requested the Secretary-General to keep the Council informed on the subject matter.

3. On 27 June 2006, the Secretary-General wrote to the President of Timor-Leste, Xanana Gusmão, informing him that he had requested the High Commissioner for Human Rights to establish an Independent Special Commission of Inquiry "to review the incidents on 28-29 April and 23, 24 and 25 May and other related events or issues which contributed to the recent crisis" ("the Commission"). The Secretary-General also informed the President that he had appointed three commissioners who would convene in Timor-Leste for a maximum total of five weeks over a maximum of two visits, and who would be supported by a secretariat based in Dili. The Secretary-General attached to his letter the terms of reference for the Commission.

## B. Terms of reference

4. The terms of reference set out the mandate of the Commission as follows:

> "(a) To establish the facts and circumstances relevant to incidents on 28 and 29 April, 23, 24 and 25 May and related events or issues that contributed to the crisis, including issues related to the functioning of the security sector;
>
> "(b) To clarify responsibility for the above-mentioned events;
>
> "(c) To recommend measures to ensure accountability for crimes and serious violations of human rights allegedly committed during the above-mentioned period, taking into account that the Government of Timor-Leste considers that the domestic justice system, which has the participation of international judges, prosecutors and defence lawyers, should be the primary avenue of accountability for these alleged crimes and violations;
>
> "(d) To report its findings within three months of its establishment through the United Nations High Commissioner for Human Rights to the Secretary-General and the National Parliament of Timor-Leste."

5. The terms of reference make clear that the Commission would enjoy the full cooperation of the Government of Timor-Leste and would be provided with the

necessary facilities to enable it to discharge its mandate. In particular, the Commission was to be guaranteed:

(a) Freedom of movement throughout the territory of Timor-Leste, including facilities of transport;

(b) Unhindered access to all places and establishments, and freedom to meet and interview representatives of governmental and local authorities, military authorities, community leaders, non-governmental organizations and other institutions, and any such person whose testimony was considered necessary for the fulfilment of its mandate;

(c) Free access to all sources of information, including documentary material and physical evidence;

(d) Appropriate security arrangements for the personnel and documents of the Commission;

(e) Protection of victims and witnesses and all those who were in contact with the Commission in connection with the inquiry, including the assurance that no such person would, as a result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals;

(f) Privileges, immunities and facilities necessary for the independent conduct of the inquiry. In particular, the Commissioners and staff would enjoy the privileges and immunities accorded to experts on missions and officials under the Convention on the Privileges and Immunities of the United Nations.

## C. Composition of the Commission

6. The Commission is composed of three members: Mr. Paulo Sérgio Pinheiro (Brazil, Chairperson), Ms. Zelda Holtzman (South Africa) and Mr. Ralph Zacklin (United Kingdom of Great Britain and Northern Ireland), supported by a secretariat headed by an Executive Director, Mr. Luc Côté (Canada). The Commissioners were appointed by the Secretary-General upon the recommendation of the High Commissioner for Human Rights based on their expertise, integrity and independence. They were selected for their expertise in:

- Investigating serious human rights violations;
- Investigating crimes;
- Security sector reform.

7. The secretariat was established and assisted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and located in the former United Nations House, Rua de Caicoli, Dili, Timor-Leste. The secretariat consisted of criminal investigators, human rights monitors, legal advisers, a political adviser, an expert in military sector reform, an expert in police sector reform, a data-management officer, security officers and other administrative support staff. The secretariat was headed by an Executive Director assisted by an executive assistant, who both arrived in Dili with a few other staff members on 7 July 2006, marking the official beginning of the work of the Commission.

## D. Working methods

8. The Commissioners met with the Executive Director and some members of the secretariat in Geneva from 3 to 5 July 2006 to develop a common understanding of the terms of the mandate and discuss relevant issues. These included the working methods of the Commission as well as the timetable of the visits of the Commissioners to Timor-Leste. The Commissioners and the Executive Director also had meetings with a number of officials at OHCHR, including the High Commissioner. Further, the Commissioners met with representatives of the Governments of Australia, Brazil, China, Japan, Malaysia, New Zealand, the Philippines, Portugal, the Republic of Korea, Thailand, the United Kingdom and the United States of America and of the European Union.

9. The Commissioners agreed that the first component of the mandate — "to establish the facts and circumstances relevant to incidents on 28 and 29 April and 23, 24 and 25 May and related events or issues that contributed to the crisis" — meant that the Commission must act as a fact-finding body. The first step was to gather and assess the information contained in the various reports and documents made by other investigative bodies. Those bodies included: the Prosecutor General of Timor-Leste; the Armed Forces, or FALINTIL-Forças Armadas de Defesa de Timor-Leste (F-FDTL); Polícia Nacional de Timor-Leste (the National Police) (PNTL); other government bodies of Timor-Leste, United Nations bodies, the Australian Federal Police and Armed Forces; other law enforcement agencies present in Timor-Leste (Malaysia, New Zealand and Portugal); other intergovernmental organizations and non-governmental organizations (NGOs). Other background materials were also to be collected and analysed in order to identify issues that contributed to the crisis. The Commission would then verify the veracity of the information in these materials and reports, as well as establish further facts, by interviewing witnesses, officials and other persons occupying positions of authority, as well as persons in police custody or detained in prison, and by visiting places where crimes were reportedly perpetrated or other incidents took place. This process would allow the Commission to establish a clear narrative of the incidents that unfolded in April and May 2006.

10. As far as "issues related to the functioning of the security sector" are concerned, the Commissioners agreed that it was important to analyse the dysfunctions in the operations of both F-FDTL and PNTL during the crisis in order to understand the apparent collapse of the security sector. Although it was understood that the mandate of the Commission did not extend to the making of recommendations as to the global reform of the security sector, any dysfunction within the two organs of the security sector relevant to institutional responsibility for the events of April and May clearly did fall within the mandate.

11. The Commissioners understood the second component of the mandate, "to clarify responsibility for the above-mentioned events", as involving both individual and institutional responsibility. To clarify individual responsibility "for crimes and serious violations of human rights allegedly committed during the above-mentioned period", the Commission had to collect a reliable body of material that indicated which individuals might be responsible for the crimes committed. The Commission was not endowed with the powers of a court or a prosecutor. In particular, the Commission lacked the coercive powers of subpoena, search and seizure, and warrants. Its powers were therefore limited to recommending that some individuals

be prosecuted under domestic criminal law and/or be held accountable under any existing institutional mechanisms of a disciplinary nature.

12. In this regard, an issue arose with respect to the standard of proof that the Commission would apply in its investigations. In view of the limitations inherent in its powers, the Commission decided that it could not comply with the normal criminal standard of proof beyond reasonable doubt.[1] Rather, the Commission concluded that the most appropriate standard was that of reasonable suspicion. This would necessitate a reliable body of material consistent with other verified circumstances tending to show that a person may reasonably be suspected of involvement in the commission of a crime. Obviously the Commission would not make final judgements as to criminal guilt. It would make an assessment of possible suspects in preparation for future investigations and possible indictments by a prosecutor.

13. The Commissioners decided that in order to recommend "measures to ensure accountability for crimes and serious violations of human rights allegedly committed during the above-mentioned period, taking into account that the Government of Timor-Leste considers that the domestic justice system, which has the participation of international judges, prosecutors and defence lawyers, should be the primary avenue of accountability for these alleged crimes and violations", they would need to make a preliminary assessment of the existing Timor-Leste domestic justice system. In particular, issues of the capacity and independence of and the level of competency within the justice system would need to be examined in order to determine whether that system could deal appropriately and in a timely manner with the recommendations of the Commission.

14. The Commission conducted its work in an impartial and independent manner in accordance with international standards. These principles have governed the working methods of the Commission in its interaction with Governments, international organizations, NGOs and individuals.

## E. The visits of the Commissioners to Timor-Leste

15. The Commissioners made their first visit to Timor-Leste from 4 to 11 August 2006. The Commissioners had meetings with the President of Timor-Leste, the Prime Minister, the Minister for Foreign Affairs and Cooperation, the Prosecutor General, the Bishop of Dili, the office of the Provedor for Human Rights and Justice (Ombudsman), the Chief of F-FDTL, the Chief Commissioner of PNTL, the former Prime Minister, the Former Defence Minister, the leaders of the main political parties Frente Revolucionária do Timor-Leste Independente (Revolutionary Front for an Independent East Timor) (FRETILIN), Partido Democrático (Democratic

[1] Article 114 (1) of the República Democrática de Timor-Leste Criminal Procedure Code states that there is no burden of proof upon the defendant in a criminal case. Article 114 (2) states that it is incumbent upon the prosecutor to sustain the indictment in trial and the court may order, either on a discretionary basis or at request, that any evidence the knowledge of which is deemed necessary to uncover the truth and to make a proper decision on the case be produced, namely in respect of civil liability. While there is no express statement of the standard of proof beyond reasonable doubt, article 278 enumerates a list of factors to be considered in the decision-making process. This implies a consideration of proven facts on the standard of proof beyond reasonable doubt, as consistent with international criminal and human rights law.

Party) (PD), Partido Social Democrático (Social Democratic Party) (PSD), Associação Social Democráta Timorense (Social Democratic Association of Timor-Leste) (ASDT), the Special Representative of the Secretary-General and other United Nations representatives from different agencies, representatives of the diplomatic community, representatives of the petitioners, former members of the Commission for Reception, Truth and Reconciliation and both an international prosecutor and a judge working in the domestic judicial sector. The Commissioners also visited places where crimes were alleged to have been committed.

16. The second visit of the Commissioners to Timor-Leste took place from 4 to 15 September 2006. The Commissioners had meetings with the President of Timor-Leste, the Prime Minister, the Minister of Justice, the Chief Justice of the Court of Appeal, the Chief of F-FDTL, the General Commander of PNTL, the former Prime Minister, the former Minister of the Interior, the Special Representative of the Secretary-General, representatives from the United Nations Integrated Mission in Timor-Leste (UNMIT) transition team, numerous NGOs and a leader of an armed group in Liquiça. The Commissioners visited the Judicial Training Centre and attended a hearing at the Dili District Court. Numerous working sessions were held with members of the secretariat in order to prepare the final draft of the report.

### F. Cooperation of civil and military authorities of Timor-Leste, other concerned Governments, the United Nations, non-governmental organizations and other representatives of civil society

17. The Commission acknowledges the excellent cooperation of the authorities of Timor-Leste, both civilian and military, the diplomatic community, the United Nations Office in Timor-Leste (UNOTIL), UNMIT, other agencies of the United Nations and NGOs. The Commission had access to all individuals and all places it required. The Commission also received numerous documents requested from all the organizations mentioned. More than 200 interviews were conducted by the secretariat and more than 1,000 documents were received. Finally, the Commission expresses its gratitude to all individuals from both Timor-Leste and abroad who agreed to be interviewed by its members or to provide documents.

## II. Background to the crisis of April and May 2006

18. The crisis that occurred in Timor-Leste between 28 April and 25 May can be explained largely by the frailty of State institutions and the weakness of the rule of law. However, this explanation can only be understood fully in the historical and cultural context of the country. Both the Portuguese and Indonesian eras created and subsumed internal divisions within Timor-Leste. Political competition within Timor-Leste has been historically settled through violence. Accordingly, many Timorese view the events of April and May 2006 as a continuum starting from the decolonization process in 1974/75 and encompassing the violence and factionalism of the Indonesian occupation and the violence that accompanied the United Nations-sponsored Popular Consultation in 1999.

**Portuguese decolonization**

19. The 1974 Carnation Revolution in Portugal triggered political activity in Portuguese Timor. The Timorese Democratic Union (UDT) was formed in May 1974 and ASDT shortly thereafter. ASDT became FRETILIN in September 1974. The relationship between these two parties had deteriorated by mid-1975. On 11 August 1975 UDT launched a pre-emptive armed attack upon FRETILIN. The counter-attack was launched on 20 August 1975. This date is now commemorated as the day of the founding of the Armed Forces for the National Liberation of East Timor (FALINTIL). A short civil war ensued in which thousands of people were killed in combat, hundreds of political prisoners were executed and tens of thousands of civilians were displaced to West Timor. On 7 September 1975 the UDT leadership issued a petition calling for the integration of Portuguese Timor into Indonesia.

**Indonesian invasion, occupation and the Timorese resistance**

20. On 28 November 1975 FRETILIN made a unilateral declaration of independence. The following day the four other Timorese political parties met in Bali and issued a joint declaration calling for the integration of Portuguese Timor within Indonesia. On 4 December 1975 a FRETILIN delegation left Timor-Leste to seek diplomatic and economic support for the anticipated military confrontation with Indonesia. That delegation included José Ramos-Horta, Mari Alkatiri and Rogerio Lobato. On 7 December Indonesia invaded Timor-Leste.

21. Dili fell quickly to the invading army. Between late 1975 and early 1978 FRETILIN/FALINTIL controlled the interior regions of the country, in which a significant part of the population sheltered. At a FRETILIN national conference that was held in mid-1976, *zonas libertadas* (liberated zones) and *bases de apoio* (resistance bases) were established. By February 1979 the last two *bases de apoio*, which were situated in the west of the country, fell. On 26 March 1979 the Indonesian encirclement and annihilation campaign, Operation Seroja, was discontinued. Indonesia declared that Timor-Leste was pacified.

**Reorganization of the resistance**

22. By 1980 the resistance was in disarray. Xanana Gusmão, one of three surviving members of the 1975 leadership inside Timor-Leste, was elected as both Commander-in-Chief of FALINTIL and National Political Commissar of the FRETILIN Central Committee. In the face of opposition from the hard-line FRETILIN faction, he adopted a policy of resistance based upon national unity rather than upon FRETILIN partisanship. Timorese society was encouraged to suppress internal political differences and unite against a common enemy. In December 1987 Xanana Gusmão resigned from the FRETILIN Central Committee and severed the connection between FALINTIL and FRETILIN. FALINTIL became the armed wing of the newly created National Council of Maubere Resistance (CNRM). This Council included FRETILIN, UDT and other nationalist parties. As a result, FRETILIN lost absolute control over the policies of the resistance. The resulting tensions between Xanana Gusmão and much of the FRETILIN leadership still reverberate within Timor-Leste today.

23. The 1991 massacre at Santa Cruz cemetery, in which Indonesian forces shot into a crowd of people gathered at the funeral of a youth killed by the same forces, killing 271 persons and injuring 362 more, both cemented the national unity basis of

the resistance and hastened the rise of the civilian clandestine movement. In November 1992 Xanana Gusmão was captured and imprisoned by the Indonesians, making him the primary political figure of the resistance. Concurrently, the clandestine resistance movement expanded across the country and a popular movement was re-established. On 30 August 1999, 78 per cent of the Timorese population voted for emancipation from Indonesian administration in the United Nations-sponsored Popular Consultation. In anticipation of the result, Indonesian security forces unleashed militias upon the population. Wide-scale burning and looting occurred as 1,500 people were killed and hundreds of thousands displaced.

**The UNTAET interregnum, 1999-2002**

24. The United Nations Transitional Administration in East Timor (UNTAET) period was one of great change. Party politics returned to the country for the first time since 1975. Critically, many of the 1975 political leaders assumed political prominence in the new domestic environment. In May 2000, FRETILIN held its first major political conference in Timor-Leste in 25 years. The party withdrew from the Xanana Gusmão-led umbrella organization National Council of Timorese Resistance (CNRT), the successor to CNRM, shortly thereafter. PSD was founded in July 2000, followed by PD in mid-2001. In the August 2001 elections FRETILIN won a 57 per cent majority of the popular vote and all but one of the district seats. Ultimately, FRETILIN acquired 55 of the 88 seats in the Constituent Assembly. Significantly, support for FRETILIN was very high in the eastern districts, but much more diluted in the western districts.

25. The UNTAET period also witnessed the creation of many modern State institutions. These include the National Parliament, the Council of Ministers, local government structures, the police service and the defence force. The current functioning of the police service, PNTL, and the Defence Force, F-FDTL, in particular, is hampered by a perceived lack of legitimacy arising from the manner of their creation. PNTL was founded with a core of Timorese who had served previously in the Indonesian police force. During 2000 FALINTIL fighters from many different regions were cantoned in Aileu. This forced cohabitation exposed long-standing political rivalries. The faltering cohesion and discipline were manifest. In late 2000, UNTAET bowed to pressure from Xanana Gusmão and agreed that the selection process for the new defence force would remain an internal FALINTIL matter. This excluded the FRETILIN leadership. On 1 February 2001, FALINTIL was retired and FDTL established.

26. In October 2001 a transitional administration was formed. All parties participated in Government, with Mari Alkatiri as the Chief Minister. The Constitution of the Democratic Republic of Timor-Leste was drafted by the FRETILIN-dominated Constituent Assembly. A number of its sections were contentious among opposition parties. The adoption of 28 November as national independence day commemorated the 1975 unilateral declaration of independence by FRETILIN. The FRETILIN flag and anthem, *Patria Patria*, were adopted as the national flag and anthem. The recently formed FDTL was renamed FALINTIL-FDTL (F-FDTL) in an attempt to link the future defence force with FRETILIN history and overcome the 1987 withdrawal of FALINTIL from FRETILIN by Xanana Gusmão.

27. F-FDTL suffered a broad public backlash, particularly from the veterans' organizations which came into existence in 2001. Rogerio Lobato made populist appeals questioning the legitimacy of F-FDTL to assume the mantle of FALINTIL. Veterans groups, including Colimau 2000 and Sagrada Familia, became the focal point for anti-F-FDTL rhetoric. Following the 2001 elections these groups agitated for the reconstitution of the defence force after the restoration of independence on 20 May 2002. Rogerio Lobato was considered for but denied the position of Secretary of State for Defence after General Taur Matan Ruak threatened to leave the defence force. Roque Rodrigues was appointed. In the lead-up to 20 May 2002 Mr. Lobato and his supporters organized veterans' marches in Dili. Upon independence Rogerio Lobato was appointed Minister of Internal Administration.

**Timor-Leste under the FRETILIN Government**

28. Following the restoration of independence on 20 May 2002 FRETILIN assumed total control over the Government under Prime Minister Alkatiri. While the FRETILIN administration has met many challenges inherent in nation-building, the power imbalance between it and its political opponents has been an issue since 2002 and informed the crisis of April and May 2006. On 15 March 2005 the last major opposition party leader remaining in Parliament resigned as Vice-President of the Parliament and quit the legislature completely.

29. The role of and demarcation between PNTL and F-FDTL within Timorese society has also been a contentious issue since 2002. In early 2003, F-FDTL was called upon to restore public order following attacks by former militia. Rogerio Lobato, by then Minister of the Interior, supported by Prime Minister Alkatiri and the Council of Ministers called upon the United Nations to establish paramilitary police units. The subsequent establishment of the Police Reserve Unit (URP) and Border Patrol Unit (UPF) with responsibility for border patrol, cross-border militia attacks and rural counter-insurgency was not well received by either F-FDTL or opposition parties. The Minister of the Interior stated his intention to expand URP to a full battalion and orchestrated a recruitment process wherein the majority of officers recruited for this unit came from western districts. The Government was unable to secure weapons for URP and UPF during the United Nations executive mandate. On 20 May 2004 this mandate ended. On 21 May 2004 the Government received a consignment donated by Malaysia of 180 HK33 semi-automatic assault rifles which were given to URP. In September 2004 the Government purchased 200 Steyr semi-automatic assault rifles for UPF. Sixty-six FN-FNC semi-automatic assault rifles were also purchased for the Rapid Response Unit (UIR). A further seven F2000 automatic machine guns were purchased, ostensibly for close protection purposes.

30. The record of PNTL intervention in public demonstrations is mixed. On 4 December 2002 a riot occurred in Dili in which a number of people were killed and wounded. Results of the subsequent inquiry into the actions of PNTL have never been made public. In July 2004 UIR officers stopped a demonstration by a veteran in front of the Government Palace. The actions of PNTL were publicly denounced as being heavy handed and lacking in respect towards a leading veteran of the resistance. In April 2005, PNTL successfully controlled the Catholic Church-led demonstrations without resort to violence. The "Church demonstration" presented the FRETILIN Government with its most serious internal political challenge. The Catholic Church issued a statement claiming that the people had lost

faith in the Government and sought the removal of Prime Minister Alkatiri. Members of the FRETILIN leadership told the Commission that they believe the demonstration was an attempt to topple the Government and a significant precursor to the crisis in April and May 2006.

**Communal divisions within Timor-Leste**

31. The current crisis has been created partially, but exacerbated significantly, by communal factionalism. This factionalism is most commonly articulated in the perception that persons from the east and west of Timor-Leste discriminate against each other. The Commission has heard opposing views on the origin and longevity of this cleavage. On the one hand it is suggested that it is a totally new phenomenon, as evinced by the total absence of the issue in the thousands of testimonies collected by the Commission for Reception, Truth and Reconciliation. On the other, the Commission of Inquiry has been told that it is a long-dormant issue dating from the Portuguese era. Most people interviewed by the Commission agree that the east-west phenomenon was manipulated during the crisis by groups with specific political interests.

32. In the view of the Commission the east-west division is a simplification of a far more complex issue. Timor-Leste has no modern history of concerted political violence between easterners and westerners as unified and opposing groups. However, there are sensitive divisions within Timorese society relating to notions of national and communal identity. The poorly defined national identity, particularly in the absence of a common enemy post-1999, is critical to an understanding of how the east versus west distinction has arisen in recent years. This division infected both F-FDTL and PNTL prior to 2006, as manifested in actual or perceived acts of discrimination and nepotism. Additionally, political interests and communities have become embroiled in the issue.

**The emergence of the April and May 2006 crisis**

33. The first signs of the current crisis emerged with the advent of the group now known as the petitioners and the subsequent manner in which F-FDTL managed their allegations of discrimination within F-FDTL. A petition dated 9 January signed by 159 officers and other ranks of F-FDTL alleged mismanagement and discrimination within F-FDTL. The petitioners were drawn from almost every unit in the defence force. The petition, addressed to President Gusmão and copied to the Chief of the Defence Force and the Minister of Defence, was received by the President on 11 January 2006. As of 1 February no response had been received by the petitioners. On 3 February the petitioners abandoned their barracks, leaving their weapons behind. They gathered in Dili and sought an interview with the President on 7 February.

34. On 8 February 418 petitioners held a march at the Presidential Palácio das Cinzas. Brigadier General Taur Matan Ruak refused the request of President Gusmão to attend the march and instead sent F-FDTL Chief of Staff Colonel Lere Annan Timor. The Minister of Defence attended at the invitation of the President. President Gusmão ordered the petitioners to return to the F-FDTL training centre at Metinaro and to participate in a commission of investigation which would examine the allegations raised in the petition. On 10 February the Commission was established; it comprised F-FDTL officers and two Members of Parliament. The

Commission conducted its activities from 12 to 17 February. The Commission failed to resolve the problems extant between the petitioners and the F-FDTL command. On 17 February the petitioners left their barracks after being granted leave. They elected not to return.

35. In mid-March Brigadier General Ruak announced the dismissal of 594 soldiers with retroactive effect as at 1 March. There is no evidence before the Commission of Inquiry that the dismissal was officially executed. The Commission notes that approximately 200 of the personnel dismissed were not petitioners, but officers and other ranks who had been chronically absent without leave in the months and years prior to March 2006. On 21 March the Prime Minister expressed his support for the decision. The dismissal was not accepted by the petitioners, who announced their intention to appeal the decision to President Gusmão.

36. On 23 March the President addressed the nation on the issue. He stated that the dismissal was within the competency of the Chief of the Defence Force, but also stated that the decision was unjust. In quoting the words of the petition, the President gave credence to the petitioners' claims that the problems within F-FDTL were due primarily to discrimination by easterners against westerners. The Commission does not question the intention of the President, but most interlocutors have told the Commission that his speech was perceived as being more divisive than helpful and as fostering rather than resolving communal conflict. Between 25 and 31 March multiple disturbances in Dili assumed an east versus west dynamic as youths from both regions became embroiled in the petitioner issue. On 3 April the petitioners moved to the place known as the Carantina in Taci Tolu. On 17 April the petitioners commenced preparations for a five-day protest.

# III. The facts and circumstances relevant to the events of April and May 2006

37. The narrative of the events which follows is the product of the first component of the mandate of the Commission and the result of its fact-finding function. It is based upon all of the material which the Commission received, being in excess of 200 statements of witnesses interviewed by the Commission, and 2,000 other documents and pieces of material. Conclusions about the facts and circumstances have been made using the reasonable suspicion standard adopted by the Commission. Where the Commission has been unable to form a conclusive view using this standard, this is stated explicitly in the text.

### The petitioners' demonstration; pre-demonstration planning

38. Between 24 and 28 April 2006 a demonstration was staged outside the Government Palace in Dili. Ostensibly organized and controlled by the petitioners, the demonstration sought resolution of alleged discriminatory practices against westerners within F-FDTL.

39. Negotiations between the petitioners and senior PNTL officers regarding the conduct of the intended demonstration took place on several days between 19 and 23 April. The Military Police were not involved. Coordinated security plans were made. The petitioners assumed responsibility for security at the demonstration site. Six petitioners were detailed to conduct daily searches of all protesters. Lieutenant Gastão Salsinha, the spokesman for the petitioners, was to maintain control of the

microphone and loud speaker by vetting persons who were nominated to make speeches. The Dili District Commander was to be contacted if PNTL help was required with internal security. PNTL were responsible for any incidents occurring externally. On the eve of the demonstration PNTL General Commander Martins issued a written order regarding PNTL deployment and the use of force. These included the use of Dili District Police for foot patrols, the Close Protection Unit for protection of State VIPs and the Police Reserve Unit for patrols in "critical areas". One platoon of the Dili Task Force was to provide assistance. Two platoons of UIR officers were to be on standby. The PNTL General Commander agreed subsequently to the active deployment of UIR. The use of firearms and tear gas was prohibited without express authorization. The negotiations culminated in a press conference on 23 April 2006, during which the petitioners guaranteed that the demonstration would be peaceful and the PNTL General Commander stated that the demonstration would be stopped immediately if it became violent.

**The first four days: 24 to 27 April**

40. On Monday 24 April 2006 the petitioners and their sympathizers, massed at the Carantina at Taci Tolu in order to march under police escort to the Government Palace. In the main the petitioners wore F-FDTL uniforms. They were unarmed. Once established in front of the Government Palace, they remained, in fluctuating numbers, until 28 April 2006. The ranks of the petitioners and their sympathizers were augmented noticeably, from the second day of the protest onwards, by the arrival of third parties, particularly members of the group known as Colimau 2000.

41. Isolated incidents of violence occurred with increasing frequency throughout Dili during the week of the demonstration. On 25 April a kiosk and goods were destroyed in the Lecidere beach area, two youths were assaulted and market stalls belonging to easterners in the Taibessi area were burned. On the same day Ozório Leki, the spokesman for Colimau 2000, made a speech at the protest site in which he threatened to unleash the crowd if the police failed to stop the attack on market stallholders. He stated further that violence would be used to secure a change of Government. Market stalls in Taibessi were burned again the following day and an off-duty PNTL member in the area was attacked. Lieutenant Salsinha allowed Mr. Leki to make a further speech on 26 April in which he used inflammatory anti-eastern language. Prime Minister Alkatiri was informed about the presence of Ozório Leki among the petitioners and the expression of anti-Government rhetoric.

42. The petitioners expected that a government representative would visit the site of the demonstration and speak with them. The issue assumed critical importance during discussions between the Government and the petitioners on 27 April. Prime Minister Alkatiri proposed a government commission to report within three months about the issues raised by the petitioners together with a subsidy to assist reintegration into districts, but refused a request to address the petitioners at the Government Palace about the proposal. Minister for Foreign Affairs José Ramos-Horta agreed to address the petitioners the following day.

**The morning of 28 April 2006**

43. With the demonstration scheduled to end at 1 p.m. on Friday, 28 April, a tangible change in the atmosphere of the crowd gathered in front of the Government Palace was evident by early morning. The Minister for Foreign Affairs was expected

at 9 a.m. The Minister believed, however, that he was scheduled to arrive at 3 p.m. Slow-burning anger at his failure to appear reached boiling point at about midday. From about 10 a.m., threats of violence and sporadic incidents of fighting had begun to occur. Stone throwing began at about 11.30 a.m. Additionally, the number of third parties among the petitioners, which had been increasing since 25 April, suddenly spiked. Lieutenant Salsinha was unable to control the anger of the youths who had joined the protest. In this atmosphere the feeling that the petitioners were willing to die for their cause gained currency.

44. So much was known by the PNTL senior command. At a 9 a.m. meeting the PNTL General Commander gave instructions to prevent any new protestors from joining the demonstration. However, at about 10 a.m. upon the request of one petitioner, Lieutenant Florindo dos Reis, he allowed 100 additional demonstrators to be admitted. At about 11.30 a.m. the members of the Dili District Task Force and of other PNTL districts formed two lines facing the protestors. At about the same time teams of UIR officers were redeployed from the Government Palace to Becora and Comoro. The UIR Commander stated that this redeployment was ordered by PNTL Deputy Commander (Operations) Ismael da Costa Babo. This is denied by Deputy Commander (Operations) Babo. The PNTL General Commander was not informed of the redeployment. PNTL blocked the Beach Road, but were insufficient in number to block the side street as well. At about 11.45 a.m. the demonstrators began to roll up their banners. One senior PNTL commander told the Commission that he took this as a signal that something was about to happen.

45. The deteriorating stability at the demonstration site was known also to Prime Minister Alkatiri. He gave telephone instructions to the Minister of the Interior to send reinforcements to the Government Palace. He telephoned President Gusmão, who agreed to telephone Lieutenant Salsinha. At about 10 a.m. the Prime Minister telephoned F-FDTL Chief of Staff Colonel Lere, the Acting Chief of the Defence Force. The Prime Minister ordered him to have the Armed Forces in readiness. Two platoons of the F-FDTL 1st Battalion in Baucau were prepared. At about 11 a.m. the Prime Minister again telephoned Colonel Lere to inform him that the situation had deteriorated further and instruct him to send Military Police officers to support PNTL. Colonel Lere ordered six Military Police officers to the demonstration site. At about 11.45 a.m. the Prime Minister received a telephone call from the President informing him that he had met with Lieutenant Salsinha, who had promised to attempt to control the crowd and remove the petitioners from the site.

46. Close to midday, the Prime Minister, President Gusmão and Minister of the Interior Lobato spoke at the Hotel Timor at the close of an international conference. On the basis of the evidence before it, the Commission is unable to draw any conclusions as to the content of this meeting. The former Prime Minister said that he expressed the view to the President that PNTL had disintegrated and that there was a need to call upon the Armed Forces to assist. He has given inconsistent statements as to whether he told the President that he had already requested the Armed Forces to be on standby. President Gusmão told the Commission that there had been no discussion as to the need for calling in the Armed Forces.

**Violence at the Government Palace**

47. At about midday the protesters began to move towards the Government Palace. The two PNTL lines broke almost immediately and many PNTL officers simply

fled. While the Commission has heard the view that it was only western PNTL officers who abandoned their posts, perhaps at the invitation of the crowd, the available information suggests that the division between those who fled and those who did not is not so easily made. Further, at least some PNTL officers were instructed to return to the PNTL headquarters by the Dili District Commander. The small number of UIR officers who had not been redeployed was stationed both in front of the Government Palace and at the Hello Mister intersection. The Military Police officers sent by Colonel Lere joined the UIR officers at the intersection.

48. The protesters entered the Government Palace. Two vehicles were burned. Ground-floor offices were ransacked. The crowd threw stones at police. One police officer was attacked with a machete. The protesters yelled words to the effect of "shoot us if you want to" to both the UIR officers and Military Police at the Hello Mister intersection. The PNTL General Commander arrived at the scene and authorized the use of tear gas. PNTL officers also fired shots. General Commander Martins told the Commission that he had not authorized this. By about 1 p.m. senior PNTL officers had returned to the PNTL headquarters leaving a limited number of ordinary and UIR PNTL officers at the scene. Minister of the Interior Lobato arrived at the headquarters wearing a flak jacket and in a highly agitated state, yelling "kill them all". The PNTL Chief of Operations told the Commission that the Minister of the Interior instructed him to move URP from Taibessi to the Government Palace. PNTL records show that one F2000 fully automatic machine gun and 2,000 rounds of ammunition were signed over to the Minister of the Interior by the PNTL General Commander. By about 1.30 p.m. the demonstrators had dispersed. Two civilians had been killed. Three civilians and one PNTL officer had suffered firearm injuries. One civilian and one PNTL officer had suffered other serious injuries.

**Violence at the Comoro market**

49. After leaving the Government Palace the demonstrators returned to Taci Tolu, escorted by PNTL and United Nations Police (UNPOL) officers. En route they passed through Comoro, a community of people of mixed eastern and western origin. A large group walked towards petitioners as they approached the market. One UIR officer was pelted with stones by the crowd and fired at least six shots, some in the air and some into the crowd. Shortly thereafter, a platoon of 21 UIR officers was sent to the airport roundabout and a second platoon of 21 UIR officers was sent to the Comoro market. Each platoon had three vehicles. Additional UIR officers not expressly deployed to the area were also present. The platoon at the market was attacked by the crowd. In response, the platoon commander ordered tear gas to be fired. The petitioners then passed through the cleared path escorted by two of the UIR vehicles. Near the market area the petitioners were subjected to gunfire. The fire came from both UIR officers travelling in the escort vehicles and members of the crowd. One civilian was killed by a weapon fired at long range. Eight civilians suffered firearm injuries. Two police officers and two civilians suffered other serious injuries.

**Violence at Rai Kotu**

50. After passing through Comoro, the retreating demonstrators continued towards Taci Tolu, some returning to their base at the Carantina and others dispersing into the hills. As the mob moved through the area, in excess of 100 houses, owned

mainly by easterners, were burned. This selective damage was observed by the Commissioners during a visit to the area in August 2006.

51. Demonstrators armed with bows and arrows gathered at Rai Kotu. At about 5 p.m. two F-FDTL vehicles carrying 14 soldiers travelled past this group en route from the Military Police headquarters in Caicoli towards the F-FDTL headquarters in Taci Tolu. On the return journey, made at about 5.15 p.m., the vehicles encountered the same group, which had constructed a barricade of sorts with burning tyres. As the vehicles approached, the demonstrators threw grenades at the F-FDTL vehicles. The 14 F-FDTL soldiers responded with gunfire. Some soldiers alighted while other soldiers remained in the vehicles. Approximately 100 shots were fired in five minutes. The attackers dispersed. One civilian was killed as a result of the confrontation. One soldier sustained a minor injury to his finger as a result of a grenade explosion. A few minutes after this incident occurred, two civilians were injured as a result of F-FDTL weapons fire close to the Taci Tolu terminal.

**The calling out of F-FDTL**

52. At about 6 p.m. on 28 April, a meeting was held at the residence of Prime Minister Alkatiri during which the security situation was discussed. The participants were: the Prime Minister; the Minister of the Interior, Rogerio Lobato; the Minister of State Administration, Ana Pessoa; the Minister of Defence, Roque Rodrigues; the Acting Chief of the Defence Force, Colonel Lere; and the PNTL General Commander, Paulo Martins. Accounts of this meeting vary, particularly as to whether the Prime Minister authorized F-FDTL to use force against the petitioners. The result of the meeting was, in short, a decision that F-FDTL would be deployed to assist PNTL to restore order and contain the petitioners. Geographic areas of responsibility of both PNTL and F-FDTL were established. Significantly, the F-FDTL was given responsibility for Taci Tolu.

53. In a report to the President of the National Parliament dated 11 May 2006, Prime Minister Alkatiri styled the decision of this meeting to deploy F-FDTL as one of the "Crisis Cabinet" pursuant to article 20 of Timor-Leste Decree-Law 7/2004 and section 115 (1) (c) of the Constitution of Timor-Leste. The legality of this decision is considered elsewhere in this report. Here it is sufficient to note the following. No orders were given in writing. No formal declaration of the state of crisis was made. During the meeting no contact was made or attempted with the President. Prime Minister Alkatiri telephoned the President the following day. The Minister for Foreign Affairs did not attend. Colonel Lere telephoned the Minister the following morning to inform him of the Prime Minister's orders, having been too busy to do so on the evening of 28 April.

54. While the nature and basis of the F-FDTL intervention may have changed following the decision of the persons assembled at the residence of the Prime Minister, the Commission is satisfied that F-FDTL was made ready to intervene and did intervene in the events of the day well before this decision was made. Colonel Lere deployed the Military Police to the Government Palace on the instruction of the Prime Minister at about 11 a.m. Regular F-FDTL soldiers were involved in a confrontation with demonstrators and civilians at Rai Kotu at about 5.15 p.m. The two platoons from the 1st Battalion of F-FDTL, ordered to be on stand-by at

10 a.m., arrived in Metinaro from Baucau at about 5.30 p.m., and one platoon was sent immediately to the Military Police headquarters in Caicoli.

55. Both PNTL and F-FDTL patrolled the city of Dili and its outskirts during the night of 28 April into the daylight hours of 29 April 2006. In part, the purpose of these patrols was to control the movement of the petitioners. F-FDTL and PNTL had differing perspectives as to the breadth of this purpose. The PNTL perspective articulated to the Commission was that petitioners were to be arrested and handed to PNTL only if they were moving about, and that no operations to capture petitioners were authorized. On the other hand, F-FDTL soldiers acted under orders that they were to search for petitioners and shoot them if they attempted to escape.

**Violence at Taci Tolu**

56. Gunfire was heard throughout the night, particularly in the western area of Dili where F-FDTL had established positions at Rai Kotu, Taci Tolu and Beduku. Rumours that F-FDTL had massacred 60 people took root on 29 April and grew rapidly thereafter, even to the extent of citing the licence plate number of the F-FDTL truck said to have been used to transport the corpses, either in boxes or a shipping container, from Taci Tolu to Viqueque District on 1 May 2006. The Commission states that this rumour of a massacre perpetrated and subsequently covered up by F-FDTL is precisely that: an unfounded rumour not supported by fact.

57. The evidence establishes that in addition to the one civilian killed at Rai Kotu, another two civilians were killed overnight. In addition to the two civilians injured close to Taci Tolu terminal during the afternoon of 28 April, two others sustained gunshot injuries overnight. Numerous civilians, not exclusively petitioners, were arrested and later released. While the Commission recognizes the possibility that several other deaths may have occurred, extensive efforts by a variety of individuals and agencies have failed to find any evidence of a massacre. These efforts have included: an appeal made by the Office of the Provedor on both radio and television for families with missing persons to come forward; a similar appeal made in leaflets distributed in internally displaced persons (IDP) camps; preliminary investigations made by the Government-established Committee for the Verification of Details about Fatalities and Wounded; and investigations undertaken as part of the mandate of the Commission. Lieutenant Salsinha confirmed that no petitioners are missing. **Accordingly, the Commission states that on the basis of all of the evidence before it, no massacre occurred.**

**The withdrawal of F-FDTL**

58. Chief of the Defence Force Brigadier General Ruak had learned of the actions of F-FDTL from an Internet report read while travelling in Indonesia during the late afternoon of 28 April. He decided to return immediately to Timor-Leste. He attended a meeting at the residence of the Prime Minister at about 4 p.m. on 29 April 2006 with all those who had been present at 6 p.m. the day before. A decision was made to withdraw the F-FDTL forces from the city to the outskirts of Dili, but to continue joint Military Police and PNTL patrols within the city. The withdrawal did not take effect on 30 April 2006 as planned, but was achieved by 4 May when F-FDTL forces returned to both Taci Tolu and Metinaro bases, leaving some soldiers stationed at the Military Police headquarters. Joint Military Police and PNTL patrols

operated throughout Dili from 30 April to 3 May. These ceased when Major Alfredo Reinado, the Commander of the Military Police, abandoned his post on 3 May 2006.

**The departure of Major Reinado**

59. Major Reinado departed with both F-FDTL Military Police officers and UIR PNTL officers during the evening of 3 May 2006. The group took their arms and ammunition and travelled to Ermera District where a meeting was held with the petitioners. The two groups did not merge. That of Major Reinado remained in the area until 8 May 2006, on which date the group relocated to Aileu. The number of members of what became known as "Alfredo's group" fluctuated over the next few days. The numbers were swelled by URP PNTL members, who joined on 4 May, and by regular F-FDTL soldiers, who joined later. The numbers reduced when 7 of the 11 UIR PNTL officers who had originally left with Major Reinado returned to PNTL on 5 or 6 May following a telephone call from General Commander Martins to one of them threatening dismissal if they did not return to PNTL within 48 hours.

60. Major Reinado told the Commission that he remained loyal to the President as the Supreme Commander of F-FDTL and broke the chain of command because there was no written order authorizing the use of F-FDTL to control the civilian population on 28 April and subsequently. There is evidence before the Commission that President Gusmão was in contact with Major Reinado following the latter's desertion. **The Commission is satisfied that this contact was no more than an attempt by the President to contain and control Major Reinado. There is no evidence that an armed group of men under the command of Major Reinado carried out criminal actions on the orders or with the authority of the President.**

**Violence in Gleno on 8 May 2006**

61. Several hundred people gathered in Gleno on 8 May to protest the massacre rumoured to have taken place on 28/29 April 2006. Some evidence suggests that the demonstration was part of the 10 District Movement led by Major Agusto Tara de Araujo and designed to boycott Government in the 10 western districts. Major Tara had deserted F-FDTL on 4 May. The PNTL General Commander ordered two armed teams of six UIR officers to accompany the Secretary of State for Region III, Egidio de Jesus, and the Administrator of Ermera District, Saturnino Babo, to Gleno. Upon their arrival, the crowd, which included petitioners, yelled that eastern UIR officers were the enemy and had shot at petitioners at Comoro market on 28 April. The eastern UIR officers were forced to take shelter in the District Administration building. The building was then surrounded by the crowd. Armed with knives, sticks, machetes and rocks, the crowd began to shout death threats against the eastern UIR officers.

62. PNTL Deputy General Commander (Operations) Babo arrived on the order of the Minister of the Interior and with the knowledge of the PNTL General Commander. He was accompanied by a small number of PNTL officers. A negotiating committee was formed. It included ex-FALINTIL Commander Ernesto Fernandes, alias Dudu, and Father Adriano Ola. After a lengthy standoff with the crowd, Deputy Commander Babo disarmed six eastern UIR officers and removed their flak jackets. They were escorted to waiting vehicles. As the cars were leaving the scene two of the disarmed UIR officers either fell or were pulled from one of the

vehicles. They were both stabbed by members of the crowd. The PNTL officers who had arrived with Deputy Commander Babo fired shots in the air to disperse the crowd. One UIR officer died and the other was seriously injured.

63. The body of the dead policeman was taken to Dili Hospital, where large numbers of UIR officers and the UIR Commander had gathered. The eastern UIR officers threatened to carry the body of the deceased through the streets of Dili before taking it to General Commander Martin's house. That evening an eastern PNTL officer made a radio announcement blaming General Commander Martins and Deputy Commander Babo for the death of the UIR officer. Deputy Commander Babo did not return to Dili.

**Armed confrontation in Fatu Ahi on 23 May 2006**

64. By 22 May both the PNTL and F-FDTL possessed intelligence that PNTL URP officers were encouraging and supporting east versus west violence in the Fatu Ahi area. Plans for a joint F-FDTL and PNTL post were made. At about 11 a.m. on 23 May two vehicles carrying nine F-FDTL 1st Battalion soldiers under the command of Lieutenant Colonel Falur arrived in Fatu Ahi to rendezvous with PNTL officers. They were to conduct a field site assessment of the planned joint position. The vehicles stopped near the summit of Fatu Ahi. As the soldiers alighted from the vehicles they saw men in police uniforms behind the school and trees. These men were not the PNTL officers expected; they were members of Alfredo's group.

65. Major Reinado and 11 of his men had arrived in the area from Aileu that morning. They were with civilians and 10 URP officers armed with automatic rifles. At about 9 a.m. two journalists arrived and commenced a videotaped interview with Major Reinado. The start of the armed confrontation is captured on that footage. The shooting was initiated by Major Reinado on the count of 10 after issuing a warning to leave. Lieutenant Colonel Falur ordered the soldiers to return fire.

66. The confrontation at Fatu Ahi lasted until nightfall. Alfredo's group surrounded the F-FDTL soldiers, not all of whom were armed, making it impossible for them to withdraw. Lieutenant Colonel Falur sought reinforcements. A PNTL vehicle with 10 PNTL officers travelling between Baucau and Dili was caught in the fire. One PNTL officer was killed and two were injured. At about midday the first F-FDTL reinforcements arrived, three of whom were injured. At about the same time an F-FDTL bus carrying soldiers to Dili to collect their wages arrived after its passengers heard gunfire. It was attacked about 300 metres to the west of the original ambush site. One of these soldiers died and three were injured. Later, Major Rai Ria arrived with an escort and both were injured. At about 2 p.m. Major Amico arrived from Metinaro with about 10 men. He approached Fatu Ahi from around the hill and obtained a higher position above Major Alfredo and his men. Major Alfredo then withdrew, using a PNTL vehicle which was later returned. Two of Major Reinado's men and one civilian were killed. In total, five people were killed and 10 injured.

**Armed confrontation in Taci Tolu/Tibar on 24 and 25 May**

67. F-FDTL had observed suspicious movements in the hills of Taci Tolu and Tibar since about 19 May. On the morning of 24 May eight F-FDTL soldiers conducting an observation patrol in the hills were attacked and contained by a group of armed persons from a higher position. This group comprised police officers from

Liquiça District, petitioners and armed civilians of the Rai Los group. A second group of F-FDTL soldiers sent from the nearby F-FDTL headquarters was also attacked and contained by the same group. As the fighting intensified, F-FDTL reinforced their positions in the hills by sending a navy vessel into Tibar Bay. The battle lasted until late in the afternoon when fire from the boat forced the attacking group to retreat.

68. On 25 May, the attacking group returned to the hills of Taci Tolu. They fired upon two F-FDTL squads sent to patrol the hills. In the meantime, another two F-FDTL squads led by Captain Kaikeri were deployed as reinforcements. The fighting started at around 7 a.m. and lasted until afternoon, although it was not as intense as the previous day. The figures are not certain, but evidence before the Commission suggests that as many as nine people were killed and three suffered firearm injuries as a result of this violence.

**Attack on the residence of Brigadier General Ruak**

69. At about 8 a.m. on 24 May the F-FDTL protection unit stationed at the residence of Brigadier General Ruak observed about 10 PNTL officers, including Deputy Commander Abilio Mesquita, close to the house. All the PNTL officers were armed with Steyr weapons except Mr. Mesquita, who carried an F2000 fully automatic machine gun. Later in the morning the armed PNTL officers were seen even closer to the house. Mr. Mesquita then gave a hand signal which precipitated gunfire from his group directed against the house. The resulting exchange of fire continued until around 5 p.m. At about midday, the F-FDTL protection unit moved to the primary school situated above the house in order to gain a better vantage point. One of the PNTL officers was killed by a soldier about 30 minutes later. The soldiers, who were armed with M16 weapons and rifle-propelled grenades, then came under heavy automatic weapons fire from the east. They responded with heavy fire, including the launching of several grenades, and were reinforced by F-FDTL soldiers throughout the day.

70. During the afternoon of 24 May Brigadier General Ruak telephoned Member of Parliament Leandro Isaac, who passed the telephone to Abilio Mesquita. Both Mr. Isaac and Commander Mesquita live near General Ruak. Mr. Isaac was armed with a Steyr weapon and at least three men armed variously with Steyr and FN-FNC semi-automatic weapons were present. The Brigadier General requested that the shooting cease to allow his children to be evacuated from the house. The Ruak children were taken to safety during a ceasefire on the evening of 24 May. The exchange of fire between the PNTL officers under the command of Commander Mesquita and F-FDTL recommenced on the morning of 25 May and continued until about 5 p.m.

**Armed confrontation between PNTL and F-FDTL at the PNTL headquarters**

71. By the evening of 24 May 2006, any relationship that existed between F-FDTL and PNTL was one of mutual suspicion. Rumours of a planned attack by F-FDTL upon the PNTL headquarters began to circulate. Tip-offs about the impending attack were made by three different people within F-FDTL to three different people within PNTL, apparently as a result of friendships that were stronger than allegiances to F-FDTL. The tip-offs were reported to the PNTL Chief of Operations, the PNTL Dili District Commander, the Minister of the Interior, the Prime Minister and

UNPOL. Indeed, one UNPOL officer reported the presence of machine guns on the roof of the former United Nations Peacekeeping Force (PKF) building during the afternoon of 24 May.

72. The PNTL Deputy General Commander (Administration), Lino Saldanha, who had been armed by and was by then operating under F-FDTL command, gave the last tip-off at about 2 a.m. on 25 May. In a telephone call to his administrative assistant, Commander Saldanha warned that F-FDTL would be coming to the PNTL headquarters to kill people. He asked specifically whether Chief of Operations de Jesus was present. Commander Saldanha made further telephone calls at about 9 a.m. and 10 a.m., the latter to Chief of Operations de Jesus, instructing all PNTL members to return to the PNTL headquarters.

73. Throughout the night of 24 to 25 May the F-FDTL hierarchy armed in excess of 200 civilians and PNTL officers and moved these civilians and officers to various locations in Dili. This process was organized as a response to the perceived threat posed to F-FDTL by PNTL. At about 1 a.m. 64 PNTL officers who had been armed by F-FDTL in Baucau left to go to Fatu Ahi. They were then sent to Military Police headquarters and from there to guard the water reservoir at Bairro Pite. At about 4 a.m. F-FDTL soldiers were also sent to Bairro Pite with orders to prevent petitioners from entering the city. Other F-FDTL soldiers were sent to the ex-PKF building and told to be ready. By daylight, 84 soldiers were present at this location. This included some troops who had been stationed in Dili well before 25 May.

74. Some time during 25 May the Prime Minister contacted both Brigadier General Ruak and PNTL Chief of Operations de Jesus, then the most senior PNTL officer in Dili, encouraging them to work together. Prime Minister Alkatiri provided the Brigadier General with the telephone number of the Chief of Operations.

75. During the morning of 25 May a convoy of PNTL vehicles passed in front of the Leader store in Comoro. Armed soldiers were present on the street. Two vehicles passed the police cars. The first was a white pick-up truck carrying three men in uniform armed with M16 weapons. The second was a red truck carrying between 15 and 20 armed men, some wearing uniforms and others in civilian clothes. The men from these vehicles and the soldiers on the street fired upon the police vehicles, wounding one PNTL officer in the legs. The police returned fire before returning, at speed, to the PNTL headquarters. The report of the shooting caused panic among the PNTL officers. Some armed themselves and assumed positions around the PNTL compound. Simultaneously, F-FDTL soldiers within the ex-PKF building heard a report that PNTL officers had opened fire upon F-FDTL soldiers in Comoro before decamping, at speed, to their headquarters. While the Commission is satisfied, on the basis of evidence of independent witnesses, that F-FDTL initiated the exchange of fire, at the time each side believed that they had been attacked by the other.

76. A tense hour passed. Then, at about 11 a.m., a red pick-up truck drove towards the PNTL headquarters. PNTL officers who witnessed this suspected that the expected attack would be launched from that truck. One fired a single warning shot. Almost immediately two grenades were fired by F-FDTL from the ex-PKF building. One landed near the university gym and the second exploded on the PNTL building, injuring three officers. PNTL then returned fire and an intense exchange of fire followed.

77. The F-FDTL position articulated to the Commission is that F-FDTL had earlier come under fire from PNTL stationed both at the PNTL headquarters and the Ministry of Justice and, further, that this fire was aimed specifically at the second floor meeting room of the ex-PKF building where Brigadier General Ruak and Colonel Lere had been present since about 8 a.m. The Commission has received no evidence to support this position. To the contrary, on the basis of independent evidence the Commission is satisfied that the exchange of fire was triggered unintentionally by the single warning shot fired by a PNTL officer. The Commission is satisfied further that although there is information which suggests the possibility that F-FDTL were preparing to launch an attack against the PNTL headquarters, the exchange of fire that commenced at 11 a.m. on 25 May was not the execution of that attack.

78. Upon hearing the shot the initial response of the F-FDTL soldiers was confused and the evidence remains unclear whether that response was spontaneous or carried out under order. Initially all of the F-FDTL fire came from within the ex-PKF building. Later, under order, the F-FDTL soldiers also took up positions to the west, south and east of the PNTL building, with a few F-FDTL soldiers also to the north. A group of about six soldiers took up positions at the Ministry of Justice intersection.

79. Five UNPOL officers within the PNTL building had established radio contact with UNPOL officers at Obrigado Barracks at about 11.30 a.m. As a result UNPOL Senior Adviser Saif Malik became aware that the UNPOL officers were trapped, that PNTL officers had been injured and that PNTL wanted to organize a ceasefire, but were unable to contact the F-FDTL commanders. At around 12.30 p.m. Mr. Malik and Colonel Reis, the Chief Military Training Adviser, who had also heard the radio communications, each spoke separately with the Special Representative of the Secretary-General. Both men sought and were granted permission to intervene. While the Special Representative of the Secretary-General did not inform Colonel Reis, who was the second in time to speak to him, that permission had already been granted to Mr. Malik, the two men spoke shortly thereafter. Mr. Malik wanted to send UNPOL officers with Colonel Reis to meet with Brigadier General Ruak. Colonel Reis refused, believing that the presence of more police officers wearing blue shirts would aggravate the situation.

80. Colonel Reis, his deputy and another officer departed Obrigado Barracks in a United Nations vehicle with the United Nations flag held from the rear passenger window. Colonel Reis spoke with Brigadier General Ruak in the entrance to the ex-PKF building. The conversation lasted from 5 to 10 minutes, during which the shooting continued. A ceasefire was established. Although Brigadier General Ruak denies that the ceasefire was conditional upon the disarming of PNTL, the Commission is satisfied that the conditions of the ceasefire were that PNTL would be disarmed, the weapons would be taken by the United Nations officers and any PNTL officer who remained behind would be subject to a new attack. The Brigadier General gave his officers the order to cease fire. Colonel Lere sent runners to communicate the order to the soldiers not within earshot.

81. As Colonel Reis was leaving the ex-PKF building, two UNPOL officers arrived in the armoured United Nations vehicle made available to Mr. Malik by the Deputy Special Representative of the Secretary-General. These UNPOL officers had been sent to the area by Mr. Malik. The two United Nations vehicles then drove

towards the PNTL headquarters arriving at about 1 p.m. Again the United Nations flag was displayed from the car of Colonel Reis. The ceasefire arrangements were explained to Chief of Operations Afonso de Jesus. Colonel Reis stressed that the surrender of arms was voluntary and only disarmed police officers would be allowed to leave. As the process of collecting weapons began, an additional six United Nations vehicles carrying UNPOL officers, including Mr. Malik, arrived. Colonel Reis and Mr. Malik had a heated verbal exchange. As the weapons collection was finalized, the PNTL officers were assembled in columns on the road flanked by United Nations vehicles.

82. A few minutes after the United Nations vehicles entered the PNTL headquarters and after the ceasefire had taken effect, one soldier, Ricardo Ribeiro Bure, was killed near the PNTL perimeter wall from a burst of fire originating from within the PNTL compound. F-FDTL soldier Francisco Amaral appeared at the Ministry of Justice intersection. His uniform was partially soaked in blood. An UNPOL officer asked if he had been injured, and was told that Mr. Amaral's friend had just been killed by PNTL.

**Shooting of PNTL officers**

83. Colonel Reis led the PNTL officers on foot from their headquarters towards the Ministry of Justice intersection. He was carrying the United Nations flag. Before leaving the officers were warned to avoid eye contact with the soldiers on the side of the road and were warned not to run. F-FDTL soldiers involved in the shooting have told the Commission that the assembled police were arrogant and singing; however, the Commission accepts contrary evidence that the demeanour of the PNTL officers indicated that they were afraid. A feeble attempt at singing the national anthem quickly died. The same F-FDTL soldiers have told the Commission that they were uncertain if the PNTL officers had actually surrendered because they did not have their hands on their heads, they could have been concealing weapons in their backpacks and they were marching not behind a white flag, but that of the United Nations.

84. The column set off at about 1.45 p.m. Lieutenant Colonel Mann and an UNPOL officer went ahead of the column to speak with the F-FDTL soldiers on the street in an attempt to keep things calm. When most of the policemen had walked through the intersection, one F-FDTL soldier appeared to be agitated and searching for someone among the police officers. The F-FDTL soldiers say that one of the policemen had made a rude hand gesture at them. Mr. Malik attempted to speak with the agitated soldier, but the soldier sidestepped and fired into the policemen. There was then gunfire from three corners of the intersection. The soldiers fired at PNTL officers already on the ground. Evidence before the Commission indicates that at least six F-FDTL soldiers were involved in the shooting. Contrary to persistent rumour, there is no evidence that PNTL officers, including those armed and given uniforms by F-FDTL, were involved in the shooting. The shooting lasted about two or three minutes and involved at least 100 rounds of ammunition. Eight PNTL officers were killed and 27 others suffered serious gunshot injuries.

85. Mr. Malik coordinated the evacuation of the wounded officers to Obrigado Barracks. This destination was chosen because the wounded PNTL officers expressed fear of F-FDTL reprisal if they were taken to the hospital. Colonel Reis and his deputy remonstrated with Brigadier General Ruak, who apologized for the

shooting. Three soldiers allegedly responsible for the shooting were paraded before the Brigadier General. Only one admitted to having participated in the shooting and stated that he was upset by the PNTL killing of Bure after the ceasefire had been established.

**Burning of the da Silva family home**

86. During the morning of 25 May a large group of young men carrying bottles of gasoline and matches assembled in the Bebonuk area of Western Dili. They were heard to say that they were looking for the houses of westerners. Many houses of westerners were pelted with rocks and set ablaze. At about 12.30 p.m. the house of the da Silva family, relatives of the Minister of the Interior, located in the Fomento 1 area, was set alight. The house was surrounded by a high wall. The attackers surrounded the house inside that wall. Neighbours on the outside of the wall spoke to one of the women trapped inside and could hear rocks being thrown at the windows. The trapped woman said that they were surrounded by armed people and unable to get out. Two children who had managed to escape from the house heard those in the crowd say "Lobato is inside". The Commission has received information that a crowd of people had gathered in front of the house a few days previously and chanted threats against "the family of the Minister of the Interior". At about 2 p.m. a neighbour used a garden hose to extinguish the flames in the parts of the house still burning. The flames were fully extinguished by 3 p.m. Six people were killed in the fire, including four children under the age of 18.

**Violence at Mercado Lama**

87. At about 3 p. m. a roadblock was established on the orders of the Military Police on Avendis Bispo de Menderis, about 50 metres south of the roundabout at Mercado Lama. It was manned by Oan Kiak, an ex-FALINTIL soldier, and his men for the purpose of finding and detaining armed PNTL officers. Vehicles were stopped and searched. At about 5 p.m. a vehicle passed at speed. Mr. Kiak and his men opened fire, injuring the priest who was driving. Shortly thereafter, a red Polytron truck approached the roadblock from the north and accelerated, rather than slowed, in front of the roadblock. Mr. Kiak and others opened fire on the vehicle, killing one man and injuring one other.

**The role of weapons in the events**

*Weapons transferred to civilians*

88. On 8 May a meeting between the Prime Minister, the Minister of the Interior, and Vicente da Conceicao, aka Rai Los, an ex-FALINTIL soldier and two of his men took place at the residence of the Prime Minister. Ostensibly this meeting was called by the Minister of the Interior to discuss security for the upcoming FRETILIN Party Congress. Accounts of this meeting vary substantially. The only issue upon which the participants agree is that there was no discussion about weapons. Rai Los told the Commission that the Prime Minister had instructed him to "eliminate" petitioners and government opponents, and that he understood the word to mean kill. Former Prime Minister Alkatiri denies using the word "eliminate" and states that Rai Los and his two men had been brought to him by the Minister of the Interior as guides who would assist delegates from the western districts attend the FRETILIN Party Congress on 17 May.

89. The former Prime Minister stated that during the meeting he took the opportunity to discuss with the Minister of the Interior the need for a group of civilians to support the URP PNTL, but that there was no discussion about the provision of weapons or uniforms to such a group. The Commission notes that the manner in which the issue of civilian support to URP was discussed between the Prime Minister and the Minister of the Interior was highly irregular. Neither before nor after this meeting was the Commander of URP or the General Commander of PNTL ever invited to give their opinion about the need for, or informed about the decision to provide, civilian support to this unit.

90. Also on 8 May 2006 Minister of the Interior Lobato ordered the Commander of UPF, Antonio da Cruz, to deliver 15 HK33 semi-automatic assault rifles to his residence. These weapons were among the 180 HK33 firearms distributed legally to UPF. Eastern members of UPF had been disarmed by Commander da Cruz to make these weapons available. The Minister of the Interior arranged separately for PNTL ammunition to be delivered. He used the weapons to arm two distinct groups of civilians. The first was a group of 31 civilians under the command of Rai Los. The second was a group known as Lima Lima (55) under the command of Antônio Lurdes, aka Antonio 55. The Minister of the Interior told Commander da Cruz to give 10 of the rifles, 6,000 rounds of ammunition and 10 magazines to Rai Los in Liquiça. At about 10 p.m. that night Rai Los met Commander da Cruz in a cemetery to receive the weapons. During the same evening the Chief of Staff of the Minister of the Interior travelled to Ermera and gave the remaining five HK33 rifles and one crate of ammunition to Antonio 55. The Lima Lima group was told to await further instructions. At about 9 p.m. on 21 May Commander da Cruz and Rai Los met at a deserted location, this time near Maubara. On the instructions of the Minister of the Interior, Rai Los received a further eight HK33 weapons and 16 magazines.

91. Minister Lobato did not instruct Rai Los to support URP. Instead, the Rai Los group was sent to various locations, including to Tibar on 23 May. On 22 May the Minister paid US$ 33,000 cash for two vehicles and arranged for the windows to be tinted overnight. The vehicles were delivered to Rai Los along with 31 URP PNTL uniforms on 23 May. On 24 May Rai Los and his men, dressed in these URP uniforms, participated in the attack on the patrolling F-FDTL soldiers. There is no evidence that the Lima Lima group was ever activated by the Minister of the Interior.

92. The PNTL General Commander became aware of the distribution of PNTL HK33 weapons to civilians by the Minister of the Interior on 19 May. On the advice of Minister for Foreign Affairs Ramos-Horta, the General Commander wrote a letter to the Prime Minister outlining the information. General Commander Martins states that this letter was delivered to the secretary to the Prime Minister on 19 May. There is no evidence allowing the Commission to conclude that the Prime Minister ever received this letter.

93. At around 8 p.m. on 21 May a meeting was held at the residence of the Prime Minister. Present were: Prime Minister Alkatiri, Minister for Foreign Affairs Ramos-Horta, Minister of Defence Rodrigues, Minister of the Interior Lobato, Chief of the Defence Force Brigadier General Ruak and PNTL General Commander Martins. It is clear that the general issue of weapons distribution was raised by Minister Ramos-Horta. The weight of the evidence before the Commission suggests that Minister of the Interior Lobato stated that weapons from UPF had been brought to

Dili as a security measure and no one thereafter pressed the issue. Prime Minister Alkatiri requested an inspection of the armouries of both F-FDTL and PNTL.

94. **The Commission has studied carefully the statements made to it concerning the distribution of PNTL weapons to civilians. Although the Commission does not accept that at the meeting on 8 May the former Prime Minister gave instructions to Rai Los to "eliminate" his political opponents, on the basis of all of the information before it the Commission is satisfied that there is a reasonable suspicion that the former Prime Minister at least had knowledge about the distribution of PNTL weapons to civilians. The Commission does not accept the statements made by both the former Prime Minister and the former Minister of the Interior that civilian support to the PNTL was lawful under the terms of the Internal Security Act.**

*F-FDTL weapons*

95. On 17 May the Brigadier General wrote to the Prime Minister requesting an audit of the F-FDTL armoury in response to allegations that civilians had been observed carrying F-FDTL weapons. The evidence before the Commission establishes that F-FDTL began to arm civilians on 24 May 2006. This was done on the order of Brigadier General Ruak and with the knowledge of the Minister of Defence. F-FDTL kept some records of the weapons issued to the 206 civilians armed in this way. Lists of names and corresponding serial numbers of weapons were made, but recipients did not sign for weapons. These civilians included ex-FALINTIL fighters and 64 PNTL officers. To facilitate the process, leaders of former clandestine organizations were contacted. Oan Kiak arrived at Metinaro Barracks after receiving a phone call from the Brigadier General to report for duty. He was supplied with a Minimi weapon, 400 rounds of ammunition and a military uniform. On 25 May Mr. Kiak used the weapon during the shooting near the Mercado Lama.

96. Brigadier General Ruak told the Commission that he was aware that there was no specific law allowing for the arming of "reservists". He stated that he was authorized to do so by the Minister of Defence after he had made the proposal. It was a political decision for which the Minister was responsible. The Brigadier General stated that the decision had been made as a result of a lack of capacity in F-FDTL following the attack in Fatu Ahi on 23 May, the attack on his residence on 24 May and the attack on F-FDTL soldiers in Taci Tolu and Tibar on 24 May. The last incident was characterized by the Brigadier General as an attack on F-FDTL headquarters. On the basis of the evidence before it the Commission is not satisfied that this incident was indeed an attack on the F-FDTL headquarters, as opposed to F-FDTL soldiers, but notes that the Brigadier General was not present during the incident.

**Irregular movement of weapons within the security forces**

97. **PNTL**. The Commission notes with concern the absence of systematic control over PNTL weapons and ammunition. The PNTL General Commander removed weapons from the PNTL National Armoury without the knowledge of the armoury officer. On 23 March 60 Steyr weapons and 50 boxes of ammunition were sent to the URP compound at Alieu. On 15 April 10 Steyr weapons and ammunition were sent to the Liquiça police station. Following the 25 May incident he ordered 10

Steyr weapons and ammunition to be stored at Gleno police station. The Commission also notes with concern the selective arming of western PNTL officers under the command of PNTL Dili District Deputy Commander Abilio Mesquita, who conducted weapons training of 10 western PNTL officers from the Dili District Task Force on 11 May. Thereafter, those officers remained under his command and were armed with Steyr weapons. A further 20 western PNTL officers were armed with Steyr weapons by Commander Mesquita on 17 May and thereafter came under his command. This training and arming of western PNTL officers was done with the authority of the PNTL General Commander.

98. A recent weapons audit conducted by an international team has found that 219 PNTL weapons remain outside PNTL custody and control. These weapons comprise 190 Glock 9 mm pistols, 13 Steyr semi-automatic assault rifles, 10 HK33 semi-automatic assault rifles, 2 FN-FNC semi-automatic assault rifles and 4 12-gauge shotguns. While PNTL records identify the last known signatory for the majority of these weapons, the habit of transferring weapons absent of either written orders or documentation about the chain of custody renders it impossible to determine the current whereabouts of these weapons.

99. **F-FDTL**. The Commission notes with concern the irregularities in the F-FDTL weapons holdings spanning several years. The baseline of 1,200 M16 weapons issued to F-FDTL by the Government is established by 2002 records. The recently conducted international weapons audit established that in February 2004 F-FDTL held 1,230 M16 weapons. The additional 30 weapons were not provided by the Government. By November 2005 the F-FDTL could account for only 1,073 M16 weapons. Although F-FDTL has stated that in 2006 they hold 1,200 M16 weapons, the records reveal that 45 M16 weapons are missing. Additionally, three FN-FNC semi-automatic rifles, three SKS semi-automatic rifles and two Uzi weapons previously within the custody and control of F-FDTL are missing. F-FDTL is also in possession of one Minimi, one .38 Special, one Browning 9 mm, two G3 semi-automatic rifles, one M16 A1 rifle and one M2 .50-calibre firearm, the provenance of which is unexplained. Also unexplained is the pedigree of 342 "ex-FALINTIL weapons" in the possession of F-FDTL.

**The impact of the events**

100. Significant loss of life, injury and widespread property damage resulted from the events of April and May as examined as part of the mandate of the Commission. At the conclusion of its inquiries, the Commission had information that up to 38 people were killed: 23 civilians, 12 PNTL officers and 3 F-FDTL soldiers. The Commission repeats that there is no evidence of a massacre of 60 people at Taci Tolu having taken place on 28/29 April. The Commission also has information that 69 people suffered injuries: 37 civilians, 23 PNTL officers, 7 F-FDTL soldiers and 2 UNPOL officers. The Commission notes that such figures are difficult to confirm and accepts that there may be discrepancies in the exact numbers.

101. Further, the events and incidents considered in this report had a devastating impact on the community at large. In addition to those killed or injured, approximately 150,000 persons were displaced (some 73,000 persons in IDP camps in and around Dili and a further 78,000 having moved to districts outside Dili). While displacement built up progressively after 28 April, the largest increase in displacement occurred after the events of 25 May. The population of the IDP camps

increased by 300 per cent in 24 hours. An estimated 1,650 houses were destroyed in the aftermath of events recounted here, with the majority occurring in late May and early June. The impact not only related to housing, but impeded men, women and children's enjoyment of a number of their economic and social rights, including to food, education, employment, and the highest attainable standard of health. According to UNICEF surveys, 15 per cent of children in the IDP camps needed immediate treatment for malnutrition; 57 per cent of respondents to a World Food Programme survey reported that they had ceased their primary income or livelihood activity. Shortages of food occurred both in camps and as a result of the pressure on extended family, who were hosting displaced persons outside Dili. In the case of the national medical hospital, access has been impeded by a perception that it is unsafe for western persons to go to the hospital. Freedom of movement has also been restricted. While there has been a well-coordinated humanitarian response, involving collaborative work between Government and the NGO community, and many persons have returned to their employment, the effects of the incidents remain evident in the continued displacement and associated problems.

# IV. Responsibility

## A. Legal background

### Framework of the State

102. Under its Constitution, Timor-Leste is established as a democratic unitary State based on "the rule of law, separation of powers, the will of the people and respect for the dignity of the human person". The State objectives are said to include the defence and guarantee of the sovereignty of the country, the guarantee and promotion of fundamental rights of citizens, political democracy and rublic participation, the promotion of the building of a society based on social justice and promotion and guarantee of effective equality of opportunity between men and women. Timor-Leste has what is described as a "semi-presidential" system with four organs of sovereignty: the President of the Republic, the National Parliament, the Government and the courts.

103. The President is Head of State and Supreme Commander of the Armed Forces and is directly elected. The President has limited powers, though is able to dissolve the National Parliament, dismiss the Government and remove the Prime Minister in particular circumstances, as well as to veto draft legislation for a set period. The President may also grant pardons or commutations of sentence as well as having the executive power to declare war. The President is assisted by a Council of State (established in May 2005) which includes the President of the National Parliament, the Prime Minister, leaders of opposition political parties and a representative of civil society.

104. The National Parliament is composed at present of 88 members. It has wide-ranging authority to pass laws and the budget and to consider the programme of Government. It has exclusive competencies with respect to a range of legislative matters, including: citizenship, rights, freedoms and guarantees, defence and security, suspension of constitutional guarantees, declaration of states of siege or emergency and granting of amnesties. Parliament has appointed seven parliamentary

committees to consider particular subject areas, including Parliamentary Committee B which considers the questions of defence and security.

105. The Government has the mandate to devise and execute the general policy of the country. It is headed by the Prime Minister who is nominated by the political party with a parliamentary majority. The Prime Minister is then appointed by the President after consultation with the political parties represented in the National Parliament. The Prime Minister has the particular responsibility to lead and guide the general policy of the Government and coordinate the activities of all ministers, with ministers having responsibility to implement policies in the areas covered by their portfolio. Ministers are nominated by the Prime Minister and appointed by the President. There is no requirement that ministers be chosen from among the Parliament. The Council of Ministers is the body which brings together the Prime Minister and ministers, and secretaries of State may also be invited to attend. In a formal sense, the Government is comprised of the Prime Minister, ministers and secretaries of State.

106. The full system of courts established in the Constitution is not yet in effect in Timor-Leste. In particular, there is no Supreme Court, High Administrative, Tax and Audit Court or military court. However, there are two levels of courts: the district courts (in Dili, Baucau, Suai and Oecussi) and the Court of Appeal (which is mandated to exercise the functions also of the Supreme Court pending its establishment).

107. Timor-Leste has a complex system of "applicable laws" reflecting its history and changes in governance arrangements. In order of applicability, the sources of law are:

(a) The Constitution of the Democratic Republic of Timor-Leste;

(b) The laws of Timor-Leste (either passed by Parliament or the Government);

(c) Regulations, decrees and executive orders made during UNTAET;

(d) Indonesian laws as the laws "that applied in East Timor prior to 25 October 1999", in so far as they do not conflict with international obligations and human rights standards.[2]

108. Understanding the norms which apply to a given situation can present difficulties arising from the mixed source of legal regulations. In the criminal law area, for instance, the applicable penal code remains the Indonesian Code, though procedure is governed by a government decree. In relation to F-FDTL, a decree-law provides for the structure of the military, but the laws governing the military discipline and career are the UNTAET laws. The situation is also often complicated by the limited specific transitional arrangements made for the continued application of laws. In particular, a question arises as to who now holds powers previously held by certain named office holders whose offices no longer exist in Timor-Leste. After 20 May 2002, the National Parliament passed a law allowing for the continuance of laws previously applicable and also providing that powers which had been conferred

[2] A Court of Appeal decision held that the "law that applied in East Timor prior to 25 October 1999" should be regarded as Portuguese law. However, Parliament clarified that what was intended was the law which had actually been applied, namely Indonesian law: Parliamentary Law 10/2003.

on the Transitional Administrator (the head of the UNTAET administration) would be exercisable by the competent authorities of Timor-Leste without further specification. Only in a limited number of cases was specific legislation passed to clarify the specifically inherited powers. In terms of practice since May 2002, the majority of laws passed by the Parliament have been proposed by the Government, and a number of key pieces of legislation for the security sector have been issued as decree-laws directly by the Government.

## B. Individual criminal responsibility

### 1. Applicable law and standards

109. The legislation that comprises the criminal law of Timor-Leste derives from a complex matrix of sources. The majority of criminal offences are established by the Penal Code of Indonesia. Concepts of criminal responsibility, including accessorial liability, are also established by this code. UNTAET regulation No. 2001/5 on Firearms, Ammunition, Explosives and Other Offensive Weapons in East Timor establishes various offences with respect to weapons. Procedural matters are governed by the Criminal Procedure Code, a decree-law of Timor-Leste. While the Criminal Procedure Code does not expressly state the criminal standard of proof to be one of beyond reasonable doubt, various articles in the Code combine to imply this standard. Under article 114 (1) the defendant carries no burden of proof. Article 278 enumerates a list of factors to be considered in the decision-making process. These articles, taken together, are consistent with a consideration of proven facts on the standard of proof beyond reasonable doubt, in accordance with international criminal and human rights law.

110. The Commission reiterates that the standard it has applied is not one of proof beyond reasonable doubt. Rather, it has used a standard of reasonable suspicion: a reliable body of material consistent with other verified circumstances tending to show that a person may reasonably be suspected of involvement in the commission of a crime. Accordingly, the Commission identifies individuals reasonably suspected of participation in criminal activity in relation to the events of April and May as described in section III and recommends that certain of these persons be prosecuted under the domestic criminal law. The Commission identifies other individuals who, on the basis of the evidence before the Commission, fall short of being considered as possible suspects in connection with the crimes, but whose involvement in these events makes them persons of interest warranting further investigation. The Commission recommends that the competent authorities undertake such further investigation.

111. While recognizing that the decision to initiate any particular prosecution is within the discretion of the competent prosecuting authority, the Commission is cognizant of the utility and practicality of prioritizing the prosecution of those who committed serious crimes and/or were in positions of leadership and responsibility. It is noted by the Commission that the Office of the Prosecutor General has already commenced a number of investigations with respect to criminal offences committed as part of the events of April and May and that certain individuals identified in the present section are currently subject to that process.

## 2. Responsibility for the events

### (a) Events for which no individual responsibility can be ascribed

112. A number of the incidents of violence that took place in April and May involved crimes for which the Commission cannot identify an individual or individuals as being responsible. This, of course, does not mean that no crimes were committed during these events. Clearly, serious crimes were committed and further investigation by the appropriate domestic bodies is warranted. These incidents are:

(a) The violence at the Government Palace at about midday on 28 April which resulted in two deaths, at least four firearm injuries and two other serious injuries;

(b) The violence at Taci Tolu during the night of 28/29 April which resulted in at least two deaths and three firearm injuries;

(c) The shooting at the Comoro market on 25 May which resulted in one firearm injury;

(d) The armed confrontation between F-FDTL soldiers and PNTL officers at the PNTL headquarters on 25 May which resulted in numerous injuries and the death of one F-FDTL soldier, Bure.

### (b) Events for which individual responsibility can be ascribed

*Violence at the Comoro market on 28 April*

113. The violence that occurred at the Comoro market on 28 April resulted in the death of one civilian, firearm injuries to eight civilians and four other serious injuries to both civilians and police officers, as described in paragraph 49 above. **Evidence before the Commission establishes that UIR officer Octavio de Jesus fired at least six shots, some into the crowd. The Commission recommends that he be prosecuted. The Commission also recommends that further investigation be undertaken to establish whether any of the following UIR officers, or other UIR officers presently unknown, participated in the subsequent shooting: Abrão da Silva, Duarte Ximenes Belo, Daniel Carvalho sa Benevides, Salvador Moniz, Americo Fatima, José da Silva Mesquita, Mateus Fernandes and José Gayu.**

*Violence at Rai Kotu on 28 April*

114. The violence that occurred at Rai Kotu on the afternoon of 28 April resulted in the death of one civilian, as described in paragraphs 50 and 51 above. Evidence before the Commission establishes that F-FDTL solider Paulo Conceição, aka Mau Kana, fired shots at civilians after he was injured in the grenade explosion. There is evidence which tends to suggest that these shots were fired in self-defence. **Accordingly, the Commission recommends that further investigation be undertaken to establish whether Paulo Conceição bears any criminal responsibility for his actions.**

*Violence in Gleno on 8 May*

115. Two disarmed eastern UIR officers were attacked by members of the crowd demonstrating in Gleno on 8 May, as described in paragraphs 61 to 63 above. One officer died, while the other was seriously injured. **The Commission notes that the Office of the Prosecutor General has identified the following 12 persons as suspects in the unlawful death of the PNTL officer: Jacinto da Costa, Francisco da Silva, Vitor da Silva, Julio Barros, Antônio de Jesus, Afonso Beremau, Francisco da Silva (different from the individual first so named), Florindo da Costa, Apolinario de Araújo and Januario Besi. The Commission recommends that the investigation of these suspects continue.**

*Armed confrontation in Fatu Ahi on 23 May*

116. The armed confrontation in Fatu Ahi is described in paragraphs 64 to 66 above. The evidence establishes that Major Reinado and the men who comprised his group are reasonably suspected of having committed crimes against life and the person during the armed confrontation in Fatu Ahi. On the basis of material before it, the Commission is able to establish that Major Reinado was present with at least 11 of his men, 10 URP officers and some civilians. The Commission is able to identify by name some but not all members of this group.

117. **The Commission recommends that the following people be prosecuted: Alfredo Alves Reinado, Rudianus Anoit Martins, Leopoldino Mendonça Exposto, Gilberto Suni Mota, Anterlrilau Ribero Guterres, aka Anteiru Rilau Ribero, Alferes Joabinho Noronha, Filomeno Branco de Araújo, Inacio Maria da Concerição Maia, José de Jesus Maria and Amaro da Costa, aka Susar.**

118. **The Commission recommends that further investigation be undertaken to establish which of the following of Major Reinado's men were present in Fatu Ahi: Moisés Ramos, Plácido Ribeiro Gonçalves, Deolindo Barros, António Savio, Filomeno Soares Menezes, Francisco de Augusto, Gilson José António da Silva, Joaninho Maria Guterres, Joaquim Barreto, José Gomes, Natalino Borges Pereira, André da Costa Pinto Martinho Almeida, Albilio da Costa de Jesus, Francisco Ximenes Alves, Filsberto Garcia, Dario da Silva Leong, Nelson Galucho and Nixon Galucho. The Commission also recommends further investigation to establish the identity of other URP officers and civilians who were members of the attacking group. If such investigation establishes the identity of these men, the Commission recommends that they also be prosecuted.**

*Armed confrontation in Taci Tolu/Tibar on 24 May*

119. Evidence before the Commission suggests that as many as nine people were killed and three suffered serious firearm injuries during the armed confrontation in Taci Tolu/Tibar, as described in paragraphs 67 and 68 above. The evidence establishes that the 31 members of the Rai Los group, PNTL officers from Liquiça and civilians are reasonably suspected of having committed crimes against life and the person during this confrontation on 24 and 25 May. The Commission has been able to identify some but not all of these men. The Commission is satisfied that the 31 members of the Rai Los group were supplied with arms and uniforms and went to the Tibar area on the instruction of the then Minister of the Interior Rogerio Lobato, as described in paragraphs 88 and 91 above.

120. **The Commission recommends that the following persons, being members of the Rai Los group, be prosecuted: Vicente da Conceição, aka Rai Los, Mateus dos Santos Pereira, aka Maurakat, and Leandro Lobato, aka Grey Harana. The Commission recommends further that the following Liquiça PNTL officers be prosecuted: Mariano Martins Soares, Martinho Borges, Abilio da Silva Cruz, Aponso Pinto, Manuel Maria dos Santos, Mateus Soares, Amadeo Silva dos Santos, Antonio da Silva, Americo da Silva, Crispin Lobato, Leandro dos Santos, Julio Tilman, Alcino Lay, and Francisco Rego. The Commission recommends also the prosecution of Rogerio Lobato.**

121. **The Commission recommends further investigation to establish the identity of other members of the Rai Los group and the civilians who comprised the attacking group. If such investigation establishes the identity of these men, the Commission recommends that they also be prosecuted.**

*Attack on the residence of Brigadier General Ruak on 24 May*

122. The evidence establishes that armed men under the command of Abilio Mesquita initiated the attack on the residence of Brigadier General Ruak on 24 May, as described in paragraphs 69 and 70 above. The Commission has not been able to establish the identities of all these men. The evidence before the Commission establishes some involvement of Member of Parliament Leandro Issac in the event. As a result of this incident one PNTL officer died and two F-FDTL soldiers were injured.

123. **The Commission recommends that the following persons be prosecuted: Abilio Mesquita, Artur Avelar Borges, Almerindo da Costa, Pedro da Costa, Valente Araújo and a person described as Elvis.**

124. **The Commission recommends that further investigations be undertaken to identify the other PNTL members present under the command of Abilio Mesquita. If these men can be identified, the Commission recommends that they also be prosecuted. The Commission also recommends that further investigations be undertaken to establish whether Leandro Issac had any culpable involvement in the crimes committed.**

*Shooting of PNTL officers on 25 May*

125. The shooting of the PNTL officers is described in paragraphs 83 to 85 above. The Commission notes that there is no evidence that the murder of 8 policemen and the wounding of 27 police officers was anything other than the spontaneous actions of individual men done entirely outside the orders of the F-FDTL hierarchy. **Specifically, the Commission is satisfied that Brigadier General Ruak cannot be held responsible for the rogue actions of F-FDTL soldiers which occurred after the ceasefire was established. The evidence establishes that six F-FDTL soldiers are reasonably suspected of murder.**

126. **The Commission recommends that the following persons be prosecuted: Nelson Francisco Cirilo da Silva, Francisco Amaral, Armindo da Silva, Paulino da Costa, José da Silva and Raimondo Madeira.**

*Burning of the da Silva family home on 25 May*

127. The Commission is satisfied that the persons who set fire to the da Silva house did so knowing that there were people trapped inside, as described in paragraph 86 above. Six persons were killed. Investigations undertaken by the Commission have not identified any possible suspects. However, those investigations have identified the names or partial names of 27 persons of interest warranting further investigation.

128. **The Commission recommends that further investigations be undertaken to establish the full identities of the following persons and their possible involvement in this event: the PNTL Deputy Commander for Aimutin Mauclau, Patricio da Silva, Carlito Sousa Gutteres aka Carlotta Soares, Sebai Gutteres, Jeronimo Antonio Freitas, Luis Freitas, Nando Geger, Luis R. da Silva, Maumeta Colo, Tinu Labe, Cecar Tiu Mutin, Alex Titu, Cacu Mau, Luciano, Amata, Jose, Vicente, Ernesto, Manuel, Ciquito or Akito, Fernando, Chebay, Edocai, Maumeta, Arui and Tito.**

*Incident at the Mercado Lama on 25 May*

129. The Commission is satisfied that Oan Kiak and his men were involved in crimes against the person and life at the roadblock established near the Mercado Lama on the afternoon of 25 May as described in paragraph 87 above. The Commission has not been able to identify the full names of all suspects.

130. **The Commission recommends that the following persons be prosecuted: Oan Kiak, Black, Marito da Costa, Alberto Ossu, Antonio Ferlimo, Anfonso Kudulai, Aze Koen, Carlito Rambo Bonifacio, Agapito, Lake Lake and Ozebi.**

*Weapons offences*

131. The Commission notes its concern at the scale of illegal and irregular weapons distribution in Timor-Leste. The Commission also notes its concern with the inertia displayed by the Government in confronting the lack of control of weapons within its security forces in the face of credible intelligence of illegality and/or irregularity in the holding, movement and use of weapons. There are varying degrees of criminal culpability with respect to weapons offences, as reflected in the varying maximum penalties established under law. Simple possession, although a crime, is a much less serious offence than use of a weapon or the unlawful transfer of a weapon or weapons. This is particularly so with respect to those persons who signed for and later returned F-FDTL weapons. Accordingly, the Commission recommends that prosecutorial discretion be exercised with respect to the weapons offences committed during the events of April and May and that only those persons reasonably suspected of the more serious weapons offences be prosecuted.

132. **PNTL weapons.** The evidence relating to the unlawful movement, possession and use of PNTL weapons is described in paragraphs 88 to 94. **The Commission recommends that the following persons be prosecuted with respect to the illegal possession, use and movement of PNTL weapons on 8 May and/or 21 May: Rogerio Lobato, Eusebio Salsinha, Antonio da Cruz, Vicente da Conceição, aka Rai Los, Mateus dos Santos Pereira, aka Maurakat, Leandro Lobato, aka Grey Harana, Antonio Lurdes, aka 55, Marcos da Silva Piedade, aka Labadae, Francisco and Santa Cruz. The Commission also recommends that further**

**investigations be undertaken to establish the identity of all persons involved in these offences.**

133. With respect to the former Prime Minister, the Commission has no material before it on the basis of which it could recommend that Mari Alkitiri should be prosecuted for being involved in the illegal movement, possession or use of weapons. Nevertheless, there is information before the Commission giving rise to a suspicion that Mari Alkatiri knew about the illegal arming of civilians with PNTL weapons by Rogerio Lobato. **Accordingly, the Commission recommends further investigations to determine whether Mari Alkatiri bears any criminal responsibility with respect to weapons offences.**

134. **F-FDTL weapons.** The evidence relating to the unlawful movement, possession and use of F-FDTL weapons is described in paragraphs 95 and 96 and demonstrates that those weapons were distributed by and/or with the knowledge and approval of the following persons: **Roque Rodrigues, Taur Matan Ruak, Tito da Costa Cristovão, aka Lere Anan Timor, Manuel Freitas, aka Mau Buti, and Domingos Raul, aka Rate Laek Falur. The Commission recommends that these persons be prosecuted for illegal weapons transfer. The Commission recommends further that of the persons who received the F-FDTL weapons on 24 and 25 May, only those who used the weapons in subsequent criminal activity be prosecuted.** This includes, for example, Oan Kiak, who used a F-FDTL weapon during the incident at Mercado Lama on 25 May. Should a decision be taken to prosecute all individuals who received weapons for unlawful possession, the Commission holds records identifying these persons.

## C. Institutional responsibility

### 1. Conceptual framework of institutional responsibility

135. The events of April and May cannot be considered in isolation. They took place within a context of particular institutional weaknesses and decisions made by those in positions of authority. This section examines the contribution of those factors to the events of April and May. In undertaking this task the Commission draws upon two aspects of its mandate: first, to "identify issues which contributed to the crisis", and second, to "clarify responsibility" for the events of April and May. In this latter respect, it will be recalled the Commission understood that its mandate included both individual and institutional responsibility. Institutional responsibility has been taken to attach to acts and omissions of institutions which materially contributed to the events. Particular attention is given to the security sector. The actions of the Government, the President and UNOTIL are examined also.

136. The Commission recognizes that Timor-Leste is a fledgling democracy. Its institutions are developing and face significant resource limitations. However, failures of the rule of law and accountability were at the heart of the events of April and May. Governance structures and existing chains of command broke or were bypassed. Roles and responsibilities became blurred. Solutions were sought outside the existing legal framework. Institutional weaknesses and divisions within and between institutions were brought to the fore and culminated in open confrontation between PNTL and F-FDTL on 25 May.

### 2. The overarching framework of the security sector

137. Timor-Leste does not have a national security framework. PNTL and F-FDTL are given specific mandates under the Constitution. Although laws have been enacted governing the activities of these institutions, the regulatory framework is not yet comprehensive. Aside from the general forum of the Council of Ministers, security sector policies are developed largely within the institutions rather than by a coordinating body or in compliance with an overall plan. The Superior Council for Defence and Security exists as an advisory body to the President but does not have policymaking power. Key legislation has been passed in the form of government decree rather than by Parliament. This has limited the opportunity for public discussion. The Commission considers that the lack of a national security framework to appropriately guide the uniformed services has contributed to a lack of effective coordination and cooperation between F-FDTL and PNTL.

138. Tension between PNTL and F-FDTL predated the events of April and May. In 2004, for example, there was an F-FDTL attack on a police station in Los Palos. This was the subject of a report by an Independent Commission of Inquiry established by the President (Los Palos report). Irritants fuelling the tension included discrepancies in conditions of service, different levels of resourcing (with PNTL receiving greater international support) and the creation of specialized units within PNTL with paramilitary functions. It had previously been considered that divisions between the two institutions reflected separate loyalties: F-FDTL to the President and PNTL to the Prime Minister. The events of April and May revealed more subtle divisions within and between the forces. Neither PNTL nor F-FDTL was a monolithic organization; significant relationships existed among individuals or groups and between entities of both institutions.

### 3. F-FDTL

#### (a) Structure and composition

139. F-FDTL was established originally from the ranks of FALINTIL veterans. Some 56 per cent of those persons first appointed were from the east. As a result of a deliberate strategy by the F-FDTL High Command to address this imbalance, by 2006 the composition reflected the national average of 35 per cent easterners and 65 per cent westerners. However, easterners remained slightly over-represented among officers, constituting approximately 50 per cent of appointments. The force strength of 1,435 in January 2006 was reduced to 715 as a result of events in the first half of 2006. Of the current force, 72 per cent came from eastern districts. F-FDTL includes headquarters staff, a Military Police Unit, 1st and 2nd Battalions, a Naval Component, as well as Force Logistics and Communications.

140. Civilian oversight of F-FDTL exists in the form of the Minister of Defence, supported by a Ministry. In practice the Ministry is minimal. It has had authorization for 18 civil service posts since 2004, but currently has only four national staff and one international adviser. No defence policy exists to guide the development of F-FDTL. A base legislative framework exists in the form of UNTAET legislation, the Organic Law on F-FDTL and various administrative instructions. It was only following the crisis that a more comprehensive package of bills was presented to the Council of Ministers. The Commission notes that many of the recommendations

made in the Los Palos report concerning strengthening the systems of F-FDTL remain unimplemented.

**(b) Veterans issue and east-west issue within F-FDTL**

141. Divisions existed within F-FDTL prior to the events of April and May. The Los Palos report noted problems in the relationship between veterans and new recruits. Seemingly as a consequence of the veterans' status, age and health factors, older veterans were given preferential static assignments. In the context of the over-representation of ex-FALINTIL easterners in the officer ranks, disagreements easily became conflated with east versus west disputes. F-FDTL took some steps to increase the transparency of processes, including the introduction of a new promotions policy. Under this policy, at least eight eastern captains and lieutenants were not promoted due to breaches of discipline and other concerns, whereas at least six western officers considered meritorious were promoted. However, rifts persisted within F-FDTL.

**(c) Weak accountability mechanisms**

142. F-FDTL has both a Code of Military Discipline detailing procedures for breaches of service discipline and provisions within its governing law concerning the liability of F-FDTL members to prosecution for criminal offences. However, few cases of alleged criminal conduct are brought before the courts and internal disciplinary processes suffer from delays and a lack of transparency.

**(d) Handling of the petition and dismissal of the petitioners**

143. The handling of the petitioners' grievances contributed significantly to the crisis. Without needing to reach any final conclusion on the merits of the petitioners' claims, it is apparent to the Commission that there were significant shortcomings in relation to the institutional handling of these matters. First, the lack of an established and transparent grievance/redress of grievance procedure represented a significant impediment to the ability of the institution to respond in a timely fashion to internal complaints. This was particularly so with respect to complaints of systemic discrimination by those in command positions. While the F-FDTL command has stressed the importance of the hierarchical chain of command for considering complaints, there seems to have been no detailed established procedure governing how complaints could be formally considered and reviewed. Second, the slowness of the institutional reaction within F-FDTL inherent in the initial objection to both the "form" of the petition as an unsigned document and its being sent first to the President meant that the opportunity for rapid intervention was lost. A commission of investigation was established in February. However, its members included persons named by the petitioners as having been involved in discriminatory conduct. In the absence of consensus between the petitioners and F-FDTL as to the appropriate means of investigation, the process broke down and petitioners left their barracks. This led to the announcement of the dismissal of the petitioners en masse in March.

144. While recognizing that the Chief of the Defence Force was faced with a mass walkout of personnel and the need to maintain the discipline of the force, the Commission notes significant discrepancies between the action taken by him and the

procedures required by law.[3] The Chief of the Defence Force made a public announcement on 16 March that the petitioners were to be considered civilians as of 1 March. Legal advice had been commissioned by the Defence Force from the internationally appointed legal adviser to the Council of Ministers. There was no legal adviser within F-FDTL or the Ministry. The legal advice was finalized on 20 March. It is not clear whether the decision of the Chief of the Defence Force predated or post-dated the legal advice. The advice concluded that the petitioners could be considered to have voluntarily abandoned their posts and recommended undertaking an individual process for discharge. The advice was attached to a letter of 21 March from the Chief of the Defence Force to the Minister of Defence in which the Minister was informed of the result. Petitioners report that they heard of the decision through the media. While the Minister of Defence considered that the discharge of the petitioners was generous, as they might otherwise have been charged with rebellion, there was a distinct lack of due process. The Administrative Instructions governing discharge prescribe consideration of individual cases against particular grounds, distinct decision makers for discharge processes for officers as opposed to other ranks, and the establishment of notification procedures through the unit commanders. Cases of resignation are also considered as subject to this discharge procedure. **It is the view of the Commission that the discharge decision undertaken without appropriate procedures contributed significantly to the build-up of tension and highlighted significant institutional weaknesses.**

### (e) The events of April and May 2006

*Calling out of F-FDTL*

145. **When called upon to provide military assistance to the civil power (the process for which is discussed in paragraphs 163-166), F-FDTL was little prepared to undertake this function. The Commission concludes that responsibility for this lies with the Minister of Defence and the Chief of the Defence Force.** The means of conducting such operations had not been detailed comprehensively in instruments, leaving only the general prescription in the Organic Law. F-FDTL line units had not carried out training exercises with PNTL. F-FDTL training focused on actions relevant to national defence and did not encompass civilian law-enforcement functions. Prior to the deployment on 28 April, a breakdown in communications systems led to repeated convoys of F-FDTL vehicles travelling through Rai Kotu and Taci Tolu. Deployment orders were transmitted orally, leaving some room for confusion. Commanders in separate deployment locations were not equipped to be able to communicate with each other, except by sending runners or vehicle patrols. During the deployment the large volume of gunfire used by the military made credible to the community rumours of mass killings and increased hostility towards F-FDTL.

[3] Under the Timor-Leste Decree-Law of 5 May 2004 on the Organic Structure of the FALINTIL-East Timor Defence Force (FALINTIL-FDTL) (Decree-Law 7/2004), there was continuing reliance on the disciplinary arrangements made under UNTAET laws. Under the UNTAET Regulation on the Establishment of a Defence Force for Timor-Leste (regulation 2001/1), the grounds for dismissing officers were established, but the procedures were to be clarified through later Administrative Instruction. For other ranks, the basis and procedure was left to later Administrative Instruction. Administrative Instructions (AIs) were promulgated by the Chief of the Defence Force for both purposes, for officers: AI Staff 015, 30 October 2003; and for other ranks: AI Staff 003, 30 October 2003.

146. Issues of coordination also arose in the deployment of F-FDTL to Fatu Ahi on 23 May. Although senior members of F-FDTL attended a coordination meeting with PNTL on the morning of the planned joint patrol, information gained concerning the location of Major Reinado seemingly was not communicated to other F-FDTL soldiers who had already left to undertake the joint patrol.

*Weapons transfer to civilians*

147. The transfer of F-FDTL weapons is described in paragraphs 95 to 96 above. **The Commission concludes that in arming civilians, the Minister and the Chief of the Defence Force acted without lawful authority and created a situation of significant potential danger.** This danger was realized in the Mercado Lama incident described in paragraph 87.

*Armed confrontation of 25 May between F-FDTL and PNTL*

148. By 25 May the F-FDTL command considered that F-FDTL was subject to a campaign of attack by PNTL. They responded militarily. The armed confrontation on 25 May must be viewed against the background of a lack of coordination and communication between PNTL and F-FDTL. However, it is apparent also that limited steps were taken by the F-FDTL command to verify the extent of the threat posed or to use non-military channels to resolve the perceived threat. On 25 May the F-FDTL High Command did not attempt in the event to contact those in operational command of PNTL or to engage the Prime Minister or President in resolving the situation. **The Commission is of the view that it was the duty of the Chief of the Defence Force to exhaust all avenues either to prevent or stop the confrontation with PNTL.**

## 4. PNTL

### (a) PNTL structure and composition

149. PNTL was established in August 2001 during the UNTAET period of administration. The United Nations retained executive authority over policing until 20 May 2004, at which point there was a handover to the PNTL General Commander. Of the initial 2,000 recruits, 370 had served formerly with the Indonesian police force. By 2006 the number of PNTL officers had increased to over 3,000. In addition to district formations, PNTL has a police intelligence service, a migration service, three special police units — UIR, UPF and URP — and a number of subsidiary units. Civilian oversight is provided in the form of the Minister of the Interior and the Ministry, although the Ministry is staffed by more police officers than civilians. The Decree-Law on the Organic Law of the National Police of Timor-Leste (PNTL) establishes that the PNTL General Commander (and PNTL) is "subordinate" to the Ministry of the Interior and is expressly obliged to execute orders of the Minister.

### (b) Factionalism and politicization

150. PNTL was fragile prior to April 2006. The fragility related not only to concerns about the level of professional skills of the PNTL officers, whose training had been relatively short and segmented, but was compounded by the factionalism and politicization of the institution. Groupings emerged on the basis of former

identities (ex- Indonesian police, ex-resistance, ex- Indonesian university students) and coalesced around senior commanders. The Commission has also been informed that PNTL had become divided and politicized as a result of the actions of the Minister of the Interior. These actions were said to have taken the form of issuing operational orders (including for personal or party political purposes), undermining the chain of command and selectively handling disciplinary processes. As a result, a parallel command structure emerged. Further groupings formed within PNTL based upon their relationship with the Minister. Some east-west tension was evident within PNTL prior to the crisis. Concerns were raised at the National Dialogue in August 2004. In the same year the Nacionalista movement was formed by 80 eastern PNTL officers. The movement was publicly critical of the institution of PNTL and the PNTL General Commander. This led to disciplinary proceedings for "disloyalty" against some 21 PNTL officers. The Minister of the Interior recommended also that the Deputy Commander (Administration) be removed from his position despite his not having been subject to a disciplinary process. Hence, by the time of the crisis PNTL had significant fracture lines.

### (c) Weak accountability systems

151. In the face of repeated complaints of misconduct by PNTL officers, PNTL gave attention to strengthening internal accountability systems. The Professional Ethics Office and the Inspectorate within the Ministry of the Interior were established. However, processes were undermined by a lack of resources and through political interference. Several PNTL officers named in section IV as being reasonably suspected of criminal conduct during the events had previously been the subject of repeated disciplinary complaints. Relatively light penalties had been imposed.

### (d) The events of April and May 2006

*Police response to the demonstration and events of 28 April*

152. The events related to the police response to the violence at the Government Palace on 28 April 2006 are described in paragraphs 47 to 48 above. **The Commission considers that the operational handling of this violence was deficient.** Although the PNTL command had received assurances of a peaceful demonstration from the petitioners, the nature of the demonstration and rising tensions on 28 April warranted a more robust police readiness.

153. An inadequate number of PNTL officers were present at the Government Palace. At the time violence broke out, the police resources were limited to one Dili Task Force platoon, 16 UIR officers and some district PNTL officers. Given the lack of contingency planning and the tendency of lower-ranking officers to rely upon their senior commanders, PNTL officers at the scene were unclear as to their operational responsibilities in the absence of those senior commanders. At the headquarters, the agitated intervention of the Minister of the Interior, including his removal of a weapon from the armoury, would have contributed to an atmosphere of panic.

154. Many police officers present at the demonstration site lacked sufficient equipment to undertake their functions. Regular PNTL officers had only their weapons. Not all members of UIR had complete sets of riot gear. Only some officers

had protective masks when tear gas was used. Radio-receiver bases were operating ineffectively, which severely restricted radio communications, and commanders were unable to transmit their operational orders effectively. Intelligence received through the Police Information Service appears not to have been processed properly nor used. A similar lack of cohesion and uniformity was noticeable in the PNTL response to the incidents of violence at Comoro.

155. The Commission notes that the PNTL Command did not launch an immediate investigation. General Commander Martins told the Commission that he had requested reports from senior officers but was not provided with them. This level of dysfunction in turn meant that the institution had no mechanism to assist it in correcting itself, or to give confidence to the population that failings or individual misconduct would be addressed. Significant distrust grew both within and outside PNTL as to the reasons for the failure. This distrust served to further fracture the already fragile PNTL.

*Events in Gleno on 8 May*

156. Given the context described in paragraph 61 above, the Commission considers the operational decisions made in response to the situation to have been deficient. Deploying six eastern UIR members was a questionable decision given the state of tension surrounding eastern police and UIR after the events of 28 April. The relatively small number of police already present did not attempt to check the crowd for weapons or take other preventive action such as establishing a security cordon. When Deputy Commander (Operations) Babo went to Gleno, he was accompanied by a small number of police officers. The limited precautions then taken to protect the unarmed eastern UIR officers contributed to the resulting injury of one and the death of another officer.

157. **The Commission concludes that the PNTL General Commander, as the official with responsibility for the daily operations of PNTL, bears primary responsibility for the operational failings of PNTL in relation to 28 April and 8 May. However, these actions cannot be divorced from the prior weaknesses and divisions within PNTL. In this context, the Commission concludes further that responsibility attached also to the Minister of the Interior for his failure to address these issues.**

*Breakdown of the chain of command of PNTL and the events of 23 to 25 May*

158. April and May witnessed the complete breakdown of the PNTL chain of command. The events at Gleno, in particular the resulting suspicion that the command decisions made by the PNTL leadership were motivated by pro-western sentiment, resulted in a deepening of east-west tension within PNTL. At this time the Deputy Commissioner (Operations) was directed by General Commander Martins to remain in Gleno for his safety. Thus, he was not available for operational command. The Deputy Commander (Administration) ceased his duties soon thereafter. The PNTL General Commander was absent for reasons of sickness during part of May. On 24 May, the General Commander abandoned his post, left Dili and become incommunicado. This was after he was informed that F-FDTL was going to attack and that he was a target. The General Commander took with him approximately 10 heavily armed security police. Thus, as of 24 May, there was no senior management in control of PNTL or available to provide guidance.

159. The Commission has dealt with the departure of operational police from PNTL in paragraph 47 above. It considers this action to be directly related to the pre-existing factionalism within PNTL. It would appear that the General Commander himself had lost confidence in eastern officers by early May, as exemplified by his authorization of the redistribution of semi-automatic weapons to and separate training of "trusted" western PNTL. This reinforced east-west tensions and existing imbalances within PNTL. Although the PNTL command did not sanction the attacks of 23 and 24 May involving some PNTL officers, they are related to the breakdown in the chain of command, existing factionalism and a prior history of limited accountability. **The Commission considers that the abandonment of post on 24 May by the PNTL General Commander was a serious dereliction of duty which left the PNTL operating without the benefit of senior leadership. It considers also that the Minister of the Interior did not take sufficient steps to respond to the breakdown in the chain of command in exercise of his functions as the political head of PNTL.**

*Arming civilians and irregular arming of PNTL*

160. As described in paragraphs 89 to 94 above, the Minister of the Interior armed civilians, some of whom were later allegedly involved in the commission of criminal acts. General Commander Martins was also involved in redistributing weapons to western officers and the removal of weapons from the PNTL National Armoury without the knowledge of the armoury officer as described in paragraph 97. **It is a matter of serious concern to the Commission that notwithstanding the existence of minimal formal procedures for the issuance of weapons from the armoury, both the Minister of the Interior and the General Commander bypassed these procedures. The lack of checks and balances in relation to such a serious matter as weapons control is a significant institutional failure. Responsibility must be attributed to both the Minister of the Interior and the PNTL General Commander.**

## 5. The Government

161. As the above sections have made clear, primary responsibility for the problems within F-FDTL and PNTL rests with those in operational command and the relevant ministers. Yet the Government, as the overall organ responsible for development of policy, also had the responsibility to respond to critical problems within and between the institutions.

162. It is clear to the Commission that the Government, through the leadership of the Prime Minister, was active in seeking political solutions to the petitioner issue. Following the events of 28 April, the Government responded promptly with the establishment of three specialized committees: a Commission of Notables (to look into the substance of the petitioners' complaints); a Committee for the Verification of Details about the Dead and Injured (in relation to allegations of 28-29 April); and a Committee for the Audit of Damaged Property and Goods. Other indications of the Government's readiness to respond to the ongoing crisis include the convening of high-level security meetings and the encouragement of cooperation between PNTL and F-FDTL.

163. However, in the light of the seriousness of the problems that had developed within and between these institutions, **the Commission concludes that the**

**Government was insufficiently proactive**. Concerns about the inappropriate behaviour of the Minister of the Interior had been raised repeatedly with the Prime Minister in previous years, including by the President. These concerns were not addressed adequately. The Government failed to take sufficient steps to defuse tensions between PNTL and the F-FDTL. No national security policy was developed nor was further action by the relevant ministers demanded. The decision of the Chief of the Defence Force to discharge the petitioners was not discussed by the Council of Ministers.

*The calling out of F-FDTL*

164. The calling out of F-FDTL in aid of the civilian power is described in paragraphs 52 to 55 above. Given the nature of such a decision, the Commission is concerned regarding the manner in which it was made. The Commission is not in a position to evaluate whether a situation of "serious or widespread disruption of public order" existed as of the evening of 28 April such as to justify the formal call-out of F-FDTL. **The Commission is able to conclude that the Government did not follow the procedures established by the Organic Law of F-FDTL regulating such action**. These omissions are significant since the procedures serve as an important check against arbitrary or unwarranted action by the Government.

165. The Commission notes numerous breaches of the Organic Law. Not all required members were present at the meeting of the Crisis Cabinet at the residence of the Prime Minister. The President was neither notified of nor invited to this meeting. His agreement was not obtained prior to the deployment of F-FDTL. Despite a malfunction of the telephone system on 28 April, no attempt was made to contact him using alternative methods. The failure to involve the President is of particular concern given his role as F-FDTL Commander in Chief. Further, when the decision was made to use F-FDTL, no formal declaration of a state of crisis was made. No document was created delineating the basis for the declaration, the territorial scope of the declaration, the degree of intervention by military authorities and powers conferred and the manner of cooperation between F-FDTL and PNTL or field operations command decisions. While a subsequent report to Parliament includes an instruction signed by the Prime Minister bearing the date 28 April 2006, the Commission is satisfied that this instruction was not written at the meeting.

166. The Prime Minister told the Commission that no written order had been issued to F-FDTL, but explained that the urgency of the matter did not permit such action. The failure to issue a written order created confusion as to the exact scope of the authorization of the deployment of F-FDTL. When the Commission interviewed members of the Crisis Cabinet, it noted significant variations in perceptions of what was authorized, notably concerning the geographical areas of deployment.

167. Furthermore, the Commission has already noted, in paragraph 54 above, that some F-FDTL officers, namely the Military Police, had been authorized to intervene on 28 April prior to any Crisis Cabinet meeting. This action was authorized unilaterally by the Prime Minister.

168. **The responsibility for the lack of appropriate procedures and control relating to the calling out of F-FDTL to aid the civil power must fall collectively on those members of the Crisis Cabinet who were present. However, particular responsibility lies with the then Prime Minister in his capacity as Head of the Government and as the author of the instructions to F-FDTL**.

*Response to the allegations of the distribution of weapons to civilians*

169. The evidence before the Commission establishes that Prime Minister Alkatiri was aware of allegations of transfer of weapons to civilians at least by 21 May. At the meeting on 21 May there was specific reference to the weapons issue as described in paragraph 93. Prime Minister Alkatiri attempted to organize an audit of weapons, although this was viewed as unfeasible once the PNTL General Commander had informed him that weapons had been sent out of Dili for security reasons. Other members of the Government present did not fully disclose information. **The Prime Minister failed to use his firm authority to denounce the transfer of weapons to civilians**. No further steps were taken by him to address the issue. Within three days the Minister of Defence had agreed to precisely this course of action.

## 6. The President

170. The powers of the President are defined in the Constitution. Although the President's specific powers are relatively limited, the broad nature of the role combined with the incumbent's personal status as the foremost leader of the independence struggle created a great potential for the blurring of responsibilities with regard to governance. While it is evident that the President acted properly in relation to the early behaviour of petitioners, by referring them back to F-FDTL, some of his later statements and actions show that the potential for the blurring of responsibilities was realized.

171. **With respect to the speech of 23 March 2006 (as described in para. 36 above), the Commission considers that the President should have shown more restraint and respect for institutional channels by exhausting available mechanisms, such as the Superior Council for Defence and Security, before making a public address to the nation. Similarly, the Commission notes that by intervening personally with Major Reinado (as described in para. 60), the President did not consult and cooperate with the F-FDTL command, thereby increasing tension between the Office of the President and F-FDTL**.

## 7. UNOTIL

172. The role of UNOTIL in the events of 25 May 2006 is described in paragraphs 79 to 85, above. UNOTIL clearly intended to bring about an end to the armed confrontation. The Commission notes that the individual UNOTIL personnel who intervened did so at great personal risk. The Commission has found previously that the shooting of PNTL officers after the ceasefire had been established was an unauthorized criminal action by individual F-FDTL soldiers. Both the Chief of the Defence Force and the UNOTIL personnel believed that the ceasefire would be maintained. In such circumstances, responsibility for the shooting of the PNTL officers cannot be ascribed to UNOTIL.

173. Nonetheless, the Commission notes that there were shortcomings in the preparedness and approach of UNOTIL to this intervention. No crisis management team was assembled to facilitate the pooling of relevant information and the identification of a clear strategy, including a communication strategy with domestic authorities. No collective plan was devised for the intervention. There do not appear to have been sufficient channels of communication established prior to or during the intervention to enable effective control to be exercised by the senior UNOTIL

leadership. No specific directions were given to those who volunteered to intervene. Great reliance appears to have been placed on the personal military and police experience of certain individuals. A more coordinated approach might have permitted greater use of the collective resources of UNOTIL in the intervention.

## V. Accountability measures

174. In the report of the Secretary-General to the Security Council of August 2004 on the rule of law and transitional justice in conflict and post-conflict societies, it was noted that "justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives...".[4] It is clear from the many statements made to the Commission in the course of its work that the people of Timor-Leste believe that the key to the advancement of peace and democracy in their country is an end to the culture of impunity and that justice be seen to be done. If this imperative is to be achieved in Timor-Leste, a sustained and substantial long-term effort will be required on the part of the Government and its international partners.

175. In accordance with its mandate, the Commission is required to recommend measures to ensure accountability for crimes and serious violations of human rights allegedly committed during April and May 2006, taking into account that the Government of Timor-Leste considers that the domestic justice system should be the primary avenue of accountability. The Commission has accordingly focused particular attention on the capacity of the Timorese judicial system to support the investigations and prosecutions of the criminal conduct identified in the present report.

### A. Existing judicial mechanisms

176. While the Government has shown a strong commitment to the justice sector, including by enacting detailed legislative frameworks, in reality Timor-Leste has what might be described as a minimally functioning judicial system.

177. The courts and structures under the Constitution which have been established are still developing and the system remains heavily dependent upon international personnel performing line functions. The justice system has been criticized in a number of reports which highlight the causal factors of this weakness. These include the vacuum left after the Indonesian withdrawal in 1999; a certain level of ad hoc planning and distribution of resources during the initial establishment phase; the lack of experienced Timorese legal actors; difficulties associated with the recruitment and use of international personnel; cumbersome language issues; and, as with other sectors, limited resources.

178. Notwithstanding this weakness, the Commission recognizes that the justice sector to some extent continued to function in the aftermath of recent events. When the international forces began to arrest persons, skeleton staff of the judicial sector undertook pre-trial and detention hearings. The investigation process has commenced in relation to some of the key events. Initial steps of the prosecution

[4] S/2004/616, summary.

process have been taken with respect to a few persons, including the former Minister of the Interior. This is indicative of a strong commitment within the judicial sector to contribute to the continued development of the rule of law in Timor-Leste.

179. In the light of its terms of reference, the Commission has considered carefully the views of the Government that primacy should be given to the domestic judicial system, the strengths and weaknesses of that system and the nature of the crimes committed. In order to ensure accountability for crimes committed during recent events, it is vital that the investigations, prosecutions and trials be, and be seen to be, impartially conducted and free of any political interference. An international tribunal is not considered appropriate given that the crimes under consideration contravene domestic law. **The Commission has concluded that criminal cases should be handled within the domestic judicial sector**. However, measures are needed to strengthen the ability of the domestic system to handle high-profile cases involving political actors in a manner that will be considered credible by the population.

180. The Commission is mindful of the complexities involved. It has given a high priority to recommendations aimed at ensuring that the process will be impartial and independent and be seen to be such. In view of the current weaknesses described above, many of the recommendations provide for a central role for international actors. Recommendations are also made concerning the involvement of national actors both to ensure sufficient knowledge of the social, political and cultural background relevant for the cases and to reinforce the development of the national justice sector. The Commission stresses the need to consider these trials in a holistic sense with attention given to the operation of the different elements of the judicial process: the courts, the Public Prosecution Service, the Office of the Public Defender and the prison system.

**The courts**

181. There are two levels of courts operating at present in Timor-Leste: the district courts and the Court of Appeal. It is the Dili District Court which has jurisdiction over crimes committed during the events outlined in this report. The Constitution specifically prohibits the creation of "courts of exception" or "special courts to judge certain categories of criminal offence".

182. The primary judges hearing cases presently are international judges. These judges have been appointed by the Superior Council for the Judiciary under the Statute of Judicial Magistrates on the basis that it is "deemed necessary and convenient". Such judges are required to have at least five years' experience and come from a civil judicial system or have a specialization in comparative law. At the time of the Commission activities, there were four international judges appointed to work in the District Court and two judges in the Court of Appeal. Eleven national probationary judges, having recently completed their theoretical training in June 2006, have re-entered the court system and are available to hear cases. Probationary judges have expressed a desire to hear more simple matters. The President of the Court of Appeal indicated to the Commission that the intention was for probationary judges to hear less serious cases and work alongside international appointees.

183. Criminal trials involving offences punishable by more than five years' imprisonment are presided over by a panel of judges. Other cases are presided over

by a single judge. The President of the Court of Appeal, as President of the Superior Council of the Judiciary, has the power to prepare "standing executive orders" and perform such administrative acts as may be necessary for the smooth running of the courts. The President of the Court of Appeal informed the Commission that the composition of panels to hear cases arising from the present report might be determined by an executive order issued by him.

184. The Commission considers that given the fragile state of the judicial sector, the nature of the cases and the need for a process which is seen to be impartial, it would be unrealistic to place the burden of such trials entirely on national probationary judges. It therefore recommends that international judges play a central role in the proceedings. National probationary judges should participate in the process in order to bring to the bench knowledge of the Timorese context, as well as to ensure that the process serves to strengthen the future Timorese judiciary.

185. **The Commission recommends that the cases related to the events of April and May 2006 be heard within the district court system of Timor-Leste. It recommends further that where, under the Criminal Procedure Code, trials involve a panel, that the panel be comprised of two international judges and one national judge, and where the matter involves a single judge, that judge be an international judge**.

**Office of the Prosecutor General**

186. The Office of the Prosecutor General is established under the Constitution as an independent organ tasked with the investigation and prosecution of criminal cases and State defence in civil litigation. The Prosecutor General, who heads the Office, is appointed by the President for a term of four years. Under the Constitution, deputy prosecutors general may also be appointed by the President. The criteria for such appointments are further set out in the Statute for the Public Prosecution Service. The body of oversight, the Superior Council for the Public Prosecution Service, has yet to be established.

187. The Office is currently staffed by the Prosecutor General (who was recently reappointed for a four-year term), together with five international prosecutors and nine probationary national prosecutors. Due to the turnover in staff and limitations of resources, the Office faces a considerable backlog of cases. As of April 2005 this backlog numbered some 2,500 cases.[5] The Secretary-General reported to the Security Council in April 2006 that improved case management systems had been introduced in the Office of the Prosecutor General, but noted that "institutional capacity ... remains fragile".[6] From its discussions with the Office, it is apparent to the Commission that cases arising out of the recent crisis would be given a particular priority. However, in order for this not to impact negatively on the existing system, additional resources would be required.

188. The capacity of the Office of the Prosecutor General to carry out investigations and prosecutions impartially and absent political interference is of fundamental importance. The Commission has had the benefit of the report of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-

[5] End of mandate report of the Secretary-General on the United Nations Office in Timor-Leste (S/2006/251), para. 15.

[6] Ibid., para. 15.

Leste (then East Timor) in 1999 (see S/2005/48). That evaluation noted with concern the Prosecutor General's interpretation that his accountability to the President under the Constitution required him to follow the policy of the latter in relation to prosecutions. The Commission of Experts concluded that the Office of the Prosecutor General did "not *at present* function independently from the State of Timor-Leste" (ibid., annex II, para. 78). The Commission is of the view that the situation remains unchanged.

189. The Commission received reports that the current handling of investigations and prosecutions in relation to the events of April and May 2006 is being influenced by political considerations. In particular, it has been alleged that there is a selectiveness of approach brought about through political pressure. The currency of criticism in the public domain is indicative of a lack of public confidence in the impartiality of the investigation and prosecution process. The Commission has received submissions calling for a senior international prosecutor to oversee the process of investigation and prosecution so as to engender public confidence in that process. The Prosecutor General expressed the view to the Commission that the Timorese probationary prosecutors have been and continue to be wary of prosecuting such high-profile cases involving political actors.

190. For all of the foregoing reasons, the Commission is of the view that international actors should play the lead role in conducting the investigations and prosecutions, as recommended in section IV above. They should be supported by national actors. This would require the appointment of a senior international prosecutor to provide independent leadership of the prosecution of these cases. This senior prosecutor would work within the existing system, but must have a clear mandate to prosecute impartially and without political interference. The preferable avenue would be for the President to appoint a deputy prosecutor general. The alternative is the appointment of a senior prosecutor within the Office of the Prosecutor General.

191. **The Commission recommends the appointment of a senior international prosecutor as Deputy Prosecutor General with a clear mandate to investigate and prosecute the cases related to events of April and May 2006 impartially and without political interference.**

192. **The Commission recommends that international legal actors undertake the lead role in investigations and prosecutions, supported by national prosecutors.**

193. Adequate resources must be made available to support the investigation and prosecution work.

194. **The Commission recommends that the prosecutors have access to dedicated police and investigation personnel, adequate administrative, translation and research staff, as well as necessary logistical support.**

**Office of the Public Defender**

195. The Office of the Public Defender is currently staffed by seven national probationary public defenders and three international public defenders. Its operations are still governed by UNTAET legislation governing the "Legal Aid Service", although it was reported to the Commission that the Government is preparing a new law to regulate this Office. Like other parts of the judicial sector,

the Office of the Public Defender is under-resourced both in terms of personnel and infrastructure.

196. In order for the Office of the Public Defender to fulfil its mandate, a substantial input of resources will be required. Currently, the Office faces a lack of transportation which leads to difficulties in gaining access to witnesses and bringing them to court. Funding issues also arise in relation to supporting the appearance of witnesses in Dili, as there are insufficient funds to provide for the board and lodging of such witnesses. Due to their limited numbers, problems have arisen in relation to ensuring regular communication between public defenders and their clients.

197. The Commission stresses that fair trials require access to a robust defence system in accordance with the principle of "equality of arms". **The Commission recommends that the resources of the Office of the Public Defender be augmented, particularly in relation to the employment of further international public defenders, investigators, translators and administrative support staff and the provision of adequate logistical support**.

**Addressing additional issues associated with trial processes**

198. As noted in paragraph 176 above, the judicial system is weak. It is apparent to the Commission that there are particular challenges which much be addressed relating to the administration of all court sectors. The courts face significant challenges with translation facilities, now compounded by the involvement of further international players in the form of international police actors. The current level of translators and interpreters will not be adequate to provide the requisite support for the court, the Office of the Prosecutor General and the Office of the Public Defender, nor to assure that the accused will understand the proceedings. Weaknesses in the area of management and administration related to the processing of cases require attention in the court, the Office of the Prosecutor General and the Office of the Public Defender. While the Ministry of Justice together with the United Nations Development Programme has devised a strategic plan to improve the court system, it is evident that further resources are required to implement these strategies.

199. **The Commission recommends that increased resources be directed towards strengthening the administration and translation services of the court, the Office of the Prosecutor General and the Office of the Public Defender**.

200. Security in the courts is extremely limited, exposing judges, prosecutors, defenders, the accused, witnesses and court staff to risk. Concern has been expressed by court actors about security arrangements outside the court premises. Security mechanisms for the appropriate safekeeping of information and records are also inadequate.

201. **The Commission recommends that adequate security be provided for court actors and premises**.

**Witness protection**

202. A key issue in relation to facilitating appropriate investigation and prosecution of criminal conduct is to ensure that those persons with relevant information are willing to come forward to authorities and, where relevant, to testify in court. The Commission has been advised repeatedly (including by authorities within the

judicial system) that this presents particular difficulties in relation to the events of April and May. Given the nature of the parties involved and the ongoing security crisis, witnesses are reluctant to approach authorities and may be reluctant to testify given the potential ramifications for them and their families. At present, there is no witness protection programme in place in Timor-Leste.

203. **The Commission recommends that the Ministry of Justice take steps to ensure the physical safety of witnesses as required**.

## B. Augmenting international support

204. In the light of the Commission's recommendations that international actors play a central role in handling cases arising out of April and May 2006, it is vital that experienced and qualified personnel be available and deployed rapidly to undertake these functions. The United Nations Development Programme has already launched an appeal for funding to support an additional three judges, three prosecutors, two public defenders and corresponding support staff (in terms of clerks and interpreters) to deal with the anticipated cases. The Commission strongly supports international assistance in this regard. The Commission has heard from a number of interlocutors that the current process of recruitment of international personnel is unnecessarily limited by language requirements and lacks flexibility and timeliness. In order to expedite the process and ensure that sufficient qualified personnel are available, the Commission supports exploring means of broadening the base of potential candidates. For instance, use could be made of professional legal networks to disseminate vacancy notices. The Commission notes that the requirement that candidates be fluent in Portuguese is a constraining factor. Consideration should be given to relaxing this requirement.

205. **The Commission recommends that consideration be given to broadening the pool of candidates for these positions in order to maximize the ability to recruit the most qualified persons. In particular, consideration should be given to widening the advertising of posts by targeting professional associations and modifying the language requirements for the positions**.

206. **The Commission recommends that donors consider favourably the requests for further support of the judicial sector in Timor-Leste, specifically the extra resources required to handle the cases arising from the crisis**.

### The prisons

207. During the period of the Commission's investigation, 57 people escaped from custody at Becora Prison. This included a number of persons arrested in relation to events in April and May. The Commission notes its concern at the evident lack of security at the detention facility.

208. **The Commission recommends that immediate attention be given to enhancing the security of the detention facilities of Timor-Leste**.

### Monitoring the progress of cases

209. The Commission underlines the importance of monitoring the progress of cases relating to April and May 2006. This is central to ensuring transparency and enhancing public confidence in the system. The Commission is aware of existing

monitoring efforts undertaken by domestic human rights NGOs and the United Nations. However, it would recommend the adoption of further initiatives.

210. **The Commission recommends that part of the Annual Report of the Prosecutor General to Parliament deal specifically with the progress of cases linked to the events of April and May 2006. The Commission recommends that the Office of the Prosecutor General disseminate information regularly concerning the progress of these cases through an outreach programme.**

211. **The Commission encourages the Office of the Provedor for Human Rights and Justice, UNMIT and NGOs to continue monitoring the progress of cases related to the events of April and May.**

## C. Use of traditional justice/reconciliation processes

212. During its investigation the Commission has become aware of the importance of the traditional justice system in Timor-Leste as well as of the example of the modified form of traditional justice provided for through the community reconciliation process of the Commission on Reception, Truth and Reconciliation for "less serious" criminal offences. The issue arose as to whether use might be made of a similar system in relation to some of the cases stemming from the events of April and May.

213. The Commission has concluded that cases identified in the present report need to be dealt with through the formal justice system. This accords closely with the community expectation for "justice" in terms of "formal justice", in order to avoid a culture of impunity.

## D. Other measures of accountability

214. Much of the present report thus far has been focused on identifying those persons and institutions responsible for the events. The Commission also recognizes the need to address the availability of remedies for persons who have suffered as a result of the events of April and May.

215. The key governmental human rights institution in Timor-Leste is the Office of the Provedor for Human Rights and Justice. Established under the Constitution, the body has been given powers to, inter alia, consider complaints regarding the abuse of public power (including by PNTL and F-FDTL) and breaches of human rights. However, the Office of the Provedor does not have power to set aside decisions or to grant compensation. Instead, it is limited to making recommendations for remedies or reparations or advising on corrective measures and/or mediating complaints.

216. Other mechanisms are limited. Complaints of misconduct by PNTL can also be considered by the Professional Ethics Office and the Office of the Inspectorate. Internal disciplinary hearings can be held by F-FDTL. However, the focus of these bodies is on internal discipline rather than on victim-oriented remedies. As outlined in this section, the ability of the courts to undertake civil cases is limited and it is unlikely that the courts will be able to offer a real remedy in terms of carrying out any order for compensation following a criminal conviction. In cases where the offending conduct constitutes criminal conduct, the undertaking by the State of prompt investigation and the submission of such cases for prosecution will be one

means of providing redress. However, consideration should also be given to other measures which will address some of the other recommended methods of reparation.

217. The Commission would, for instance, encourage the establishment of a national programme for reparations. This would not equate simply to monetary compensation. Instead, consideration should be given to the range of necessary measures including acknowledgement of the wrongdoing, compensation for economically assessable damage, full public disclosure of the events in question (including through dissemination of this report), the establishment of rehabilitation programmes, and administrative sanctions against persons within institutions bearing responsibility. Measures to assist those whose family members were killed, acknowledgment by governmental authorities of their responsibility and explanations for what steps are to be taken to avoid a recurrence of violations appear to be of key importance to the community.

218. **The Commission recommends that the Government provide reparations for those who have suffered as a result of the events of April and May, with particular attention given to persons who have suffered the death of a family member, significant injury and the destruction of their residences**.

219. **The Commission recommends that those institutions bearing responsibility for events in question, acknowledge publicly their responsibility for having contributed to the events**.

220. **The Commission recommends that special measures be taken to ensure the dignity and avoid the retraumatization of victims in any judicial or non-judicial processes**.

# VI. Conclusions and findings

## A. Conclusions

221. The Commission is of the view that the violent events of April and May were more than a series of criminal acts. They were the expression of deep-rooted problems inherent in fragile State institutions and a weak rule of law. The events exposed many deficiencies and failures, particularly in the two institutions at the centre of the crisis, F-FDTL and PNTL, along with the Ministry of Defence and the Ministry of the Interior charged with their oversight. The absence of comprehensive regulatory frameworks and the bypassing of existing institutional mechanisms, even if underdeveloped, contributed significantly to the emergence and growth of the crisis.

222. The Commission believes that the conclusions, findings and recommendations of the present report should not be considered as ends in themselves. Rather, they should be viewed as the foundation upon which the capacity-building and strengthening of State institutions and the rule of law should rest. The Commission hopes that the political leaders of Timor-Leste and the international community will draw from the report in developing strong frameworks, norms and practices of good governance.

223. This conclusion does not detract from the seriousness of the crimes committed during April and May. It is critical to the foundations of the State that persons be

held to account for their actions through a process which is both fair and prompt. The Commission is cognizant of the overwhelming desire on the part of the community for justice, which must be fulfilled by an impartial, efficient and credible judicial system. The Commission is of the view that justice, peace and democracy are mutually reinforcing imperatives. If peace and democracy are to be advanced, justice must be both effective and visible. The Commission urges the Government of Timor-Leste to implement its recommendations and asks the international community to support every effort made by the Government in this regard.

## B. Findings

224. The Commission finds that:

(a) The Government was insufficiently proactive in addressing the lack of a national security policy and problems evident within and between PNTL and F-FDTL;

(b) The Government failed to follow the requisite legislative procedures in calling out F-FDTL on 28 April 2006, a matter for which those members of the Crisis Cabinet who made the decision, and in particular the former Prime Minister, bear responsibility;

(c) F-FDTL had limited preparedness to provide military assistance to the civil power, a matter for which responsibility lies with the Minister of Defence and the Chief of the Defence Force;

(d) The operational planning and response to the violence by PNTL during April and May was deficient, a matter for which the PNTL General Commander and the Minister of the Interior bear responsibility;

(e) No massacre of 60 people occurred at Taci Tolu on 28 and 29 April 2006;

(f) The abandonment of post on 24 May by the PNTL General Commander was a serious dereliction of duty and the Minister of the Interior failed to take sufficient steps to respond to the breakdown in the chain of command of PNTL;

(g) The Chief of the Defence Force cannot be held criminally responsible for the shooting of PNTL officers by F-FDTL soldiers after the ceasefire had been established on 25 May;

(h) The Chief of the Defence Force failed to exhaust all avenues to either prevent or stop the confrontation between F-FDTL and PNTL on 25 May;

(i) There was an absence of systematic control over weapons and ammunition within the security sector, particularly within PNTL. The Commission finds that the Minister of the Interior and the General Commander bypassed institutional procedures by irregularly transferring weapons within the institution;

(j) Both PNTL and F-FDTL weapons were distributed to civilians. In arming civilians, the Minister of the Interior, the Minister of Defence and the Chief of Defence acted without lawful authority and created a situation of significant potential danger;

(k) The former Prime Minister failed to use his firm authority to denounce the transfer of security sector weapons to civilians in the face of credible information that such transfer was ongoing and involved members of the Government;

(l) The speech given by the President on 23 March 2006 was perceived as divisive and the President should have shown more restraint and respect for institutional channels by exhausting available mechanisms before giving the speech and in communicating directly with Major Reinado after the latter's desertion;

(m) The President did not order or authorize the armed group of men under the command of Major Reinado to carry out criminal actions;

(n) Certain individuals are criminally responsible for the incidents of violence during April and May 2006.

# VII. Recommendations

## A. Individual criminal responsibility

**Recommendation 1**

225. **The Commission recommends that numerous persons reasonably suspected of participation in criminal activity be prosecuted. These people are identified in relation to each of the events considered by the Commission in paragraphs 113 to 134 above, inclusive.**

**Recommendation 2**

226. **The Commission recommends that the involvement of numerous persons in each of the events considered by the Commission warrants further investigation. These people are identified in relation to these events in paragraphs 114 to 134 above, inclusive.**

**Recommendation 3**

227. **The Commission has recommended that further investigations be undertaken with respect to events of violence for which the Commission cannot identify an individual or individuals as being responsible. These events are identified in paragraph 112 above.**

## B. Accountability measures

**Recommendation 4**

228. **The Commission recommends that State officials involved in the events of April and May be subject to appropriate disciplinary procedures and administrative sanctions.**

**Recommendation 5**

229. **The Commission recommends the establishment of robust and independent police and military oversight mechanisms. The mechanisms should be responsible for investigating complaints of police and military conduct.**

**Recommendation 6**

230. **The Commission has concluded that criminal cases should be handled within the domestic judicial system and that the cases related to the events of April and May 2006 be heard within the district court system of Timor-Leste. It recommends further that where, under the Criminal Procedure Code, trials involve a panel, that the panel be comprised of two international judges and one national judge, and where the matter involves a single judge, that judge be an international judge.**

**Recommendation 7**

231. **The Commission recommends the appointment within the domestic system of a senior international prosecutor as Deputy Prosecutor General with a clear mandate to investigate and prosecute the cases related to events of April and May 2006 impartially and without political interference.**

**Recommendation 8**

232. **The Commission recommends that international legal actors undertake the lead role in investigations and prosecutions, supported by national prosecutors. Adequate resources must be made available to support the investigation and prosecution work.**

**Recommendation 9**

233. **The Commission recommends that the prosecutors have access to dedicated police and investigation personnel, adequate administrative, translation and research staff, as well as necessary logistical support.**

**Recommendation 10**

234. **The Commission recommends that the resources of the Public Defender's Office be augmented, particularly in relation to the employment of further international Public Defenders, investigators, translators, administrative support and the provision of adequate logistical support.**

**Recommendation 11**

235. **The Commission recommends that increased resources be directed towards strengthening the administration and translation services of the court, the Office of the Prosecutor General and the Office of the Public Defender.**

**Recommendation 12**

236. **The Commission recommends that adequate security be provided for court actors and premises.**

**Recommendation 13**

237. **The Commission recommends that the Ministry of Justice take steps to ensure the physical safety of witnesses as required.**

**Recommendation 14**

238. **The Commission recommends that consideration be given to broadening the pool of candidates for these positions, in order to maximize the ability to recruit the most qualified persons for these positions. In particular, consideration should be given to widening the advertising of posts by targeting professional associations and modifying the language requirements for the positions.**

**Recommendation 15**

239. **The Commission recommends that donors consider favourably the requests for further support of the judicial sector in Timor-Leste, specifically the extra resources required to handle the cases arising from the crisis.**

**Recommendation 16**

240. **The Commission recommends that immediate attention be given to enhancing security in detention facilities of Timor-Leste.**

**Recommendation 17**

241. **The Commission recommends that part of the Annual Report of the Prosecutor General to Parliament deal specifically with the progress of cases linked to the events of April and May 2006. The Commission recommends that the Office of the Prosecutor General disseminate information regularly concerning the progress of these cases through an outreach programme.**

**Recommendation 18**

242. **The Commission encourages the Office of the Provedor for Human Rights and Justice, UNMIT and NGOs to continue monitoring the progress of cases related to the events of April and May.**

**Recommendation 19**

243. **The Commission recommends that the Government provide reparations for those who have suffered as a result of the events of April and May, with particular attention given to persons who have suffered the death of a family member, significant injury and the destruction of their residences.**

**Recommendation 20**

244. **The Commission recommends that those institutions bearing responsibility for events in question acknowledge publicly their responsibility for having contributed to the events.**

**Recommendation 21**

245. **The Commission recommends that special measures be taken to ensure the dignity and avoid the retraumatization of victims in any judicial or non-judicial processes.**